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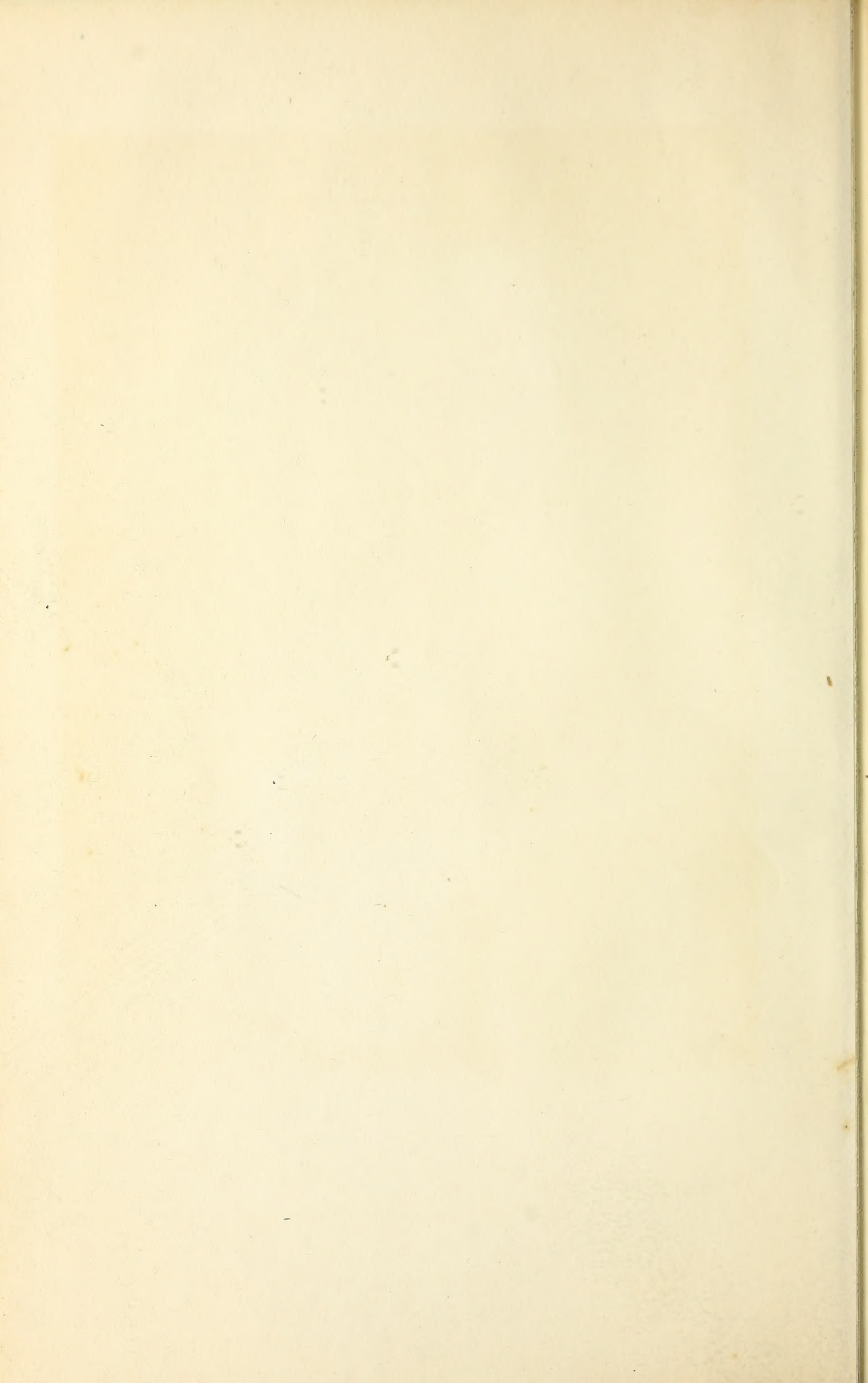


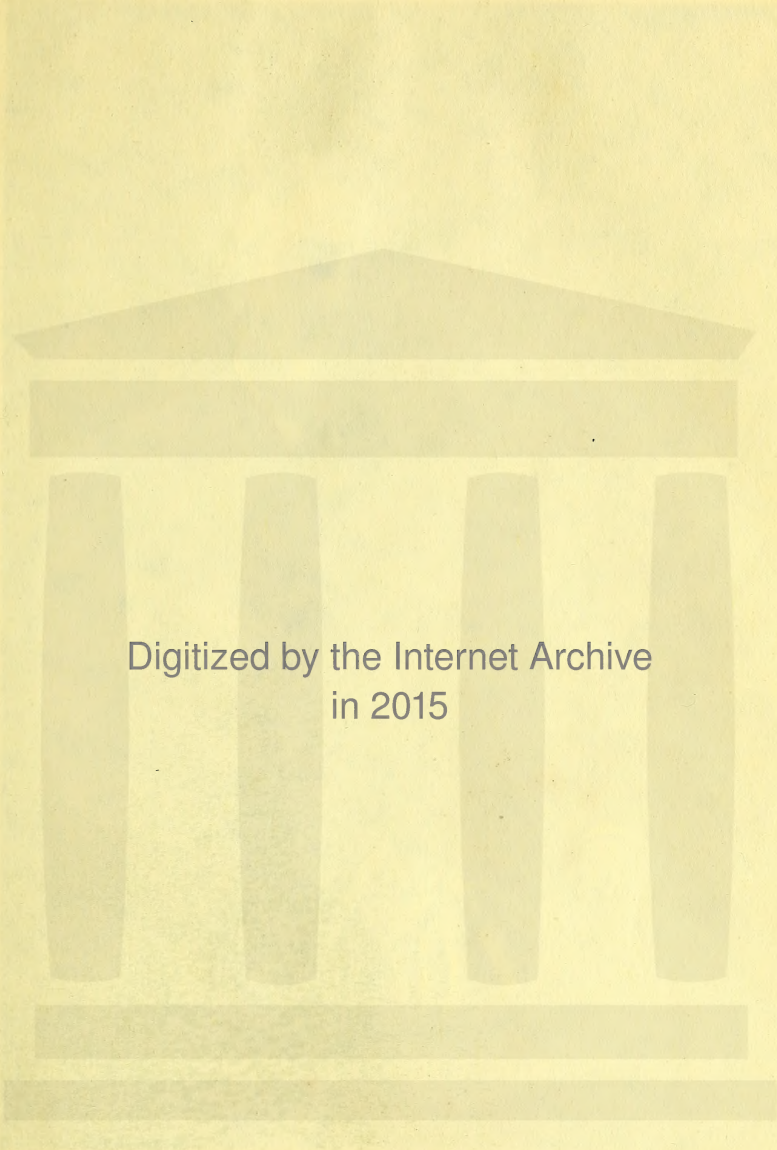
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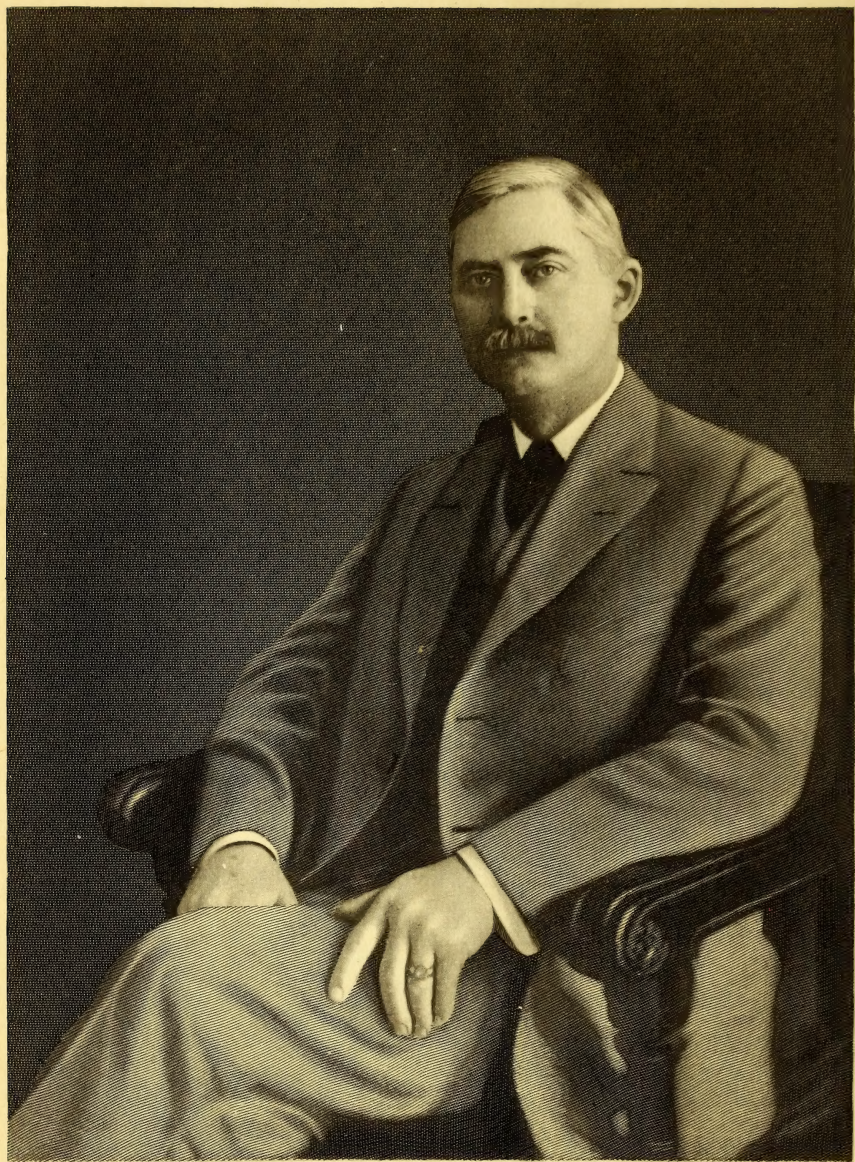






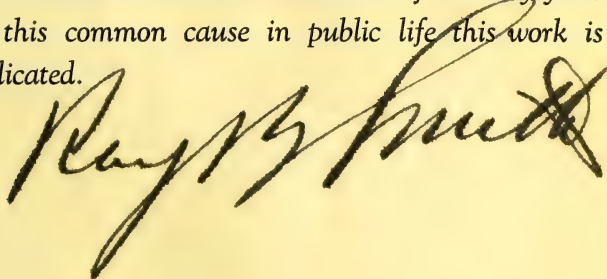
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Ray B Smith

Mindful of the difficulties constantly encountered in ascertaining quickly and accurately the salient facts which, like milestones, have, in the past, marked the continuous development and progress of our state as the leader of the governments of the world in striving to achieve the highest political ideals consistent with the protection of the fundamental rights of the individual; and realizing that we must have these facts at our command if we are to successfully deal with the problems of the present and future; to those with whom I have been associated for many years in this common cause in public life this work is dedicated.

A handwritten signature in dark ink, reading "Ray B. Smith". The signature is written in a cursive style with a large, sweeping initial "R" and a stylized "S" at the end.



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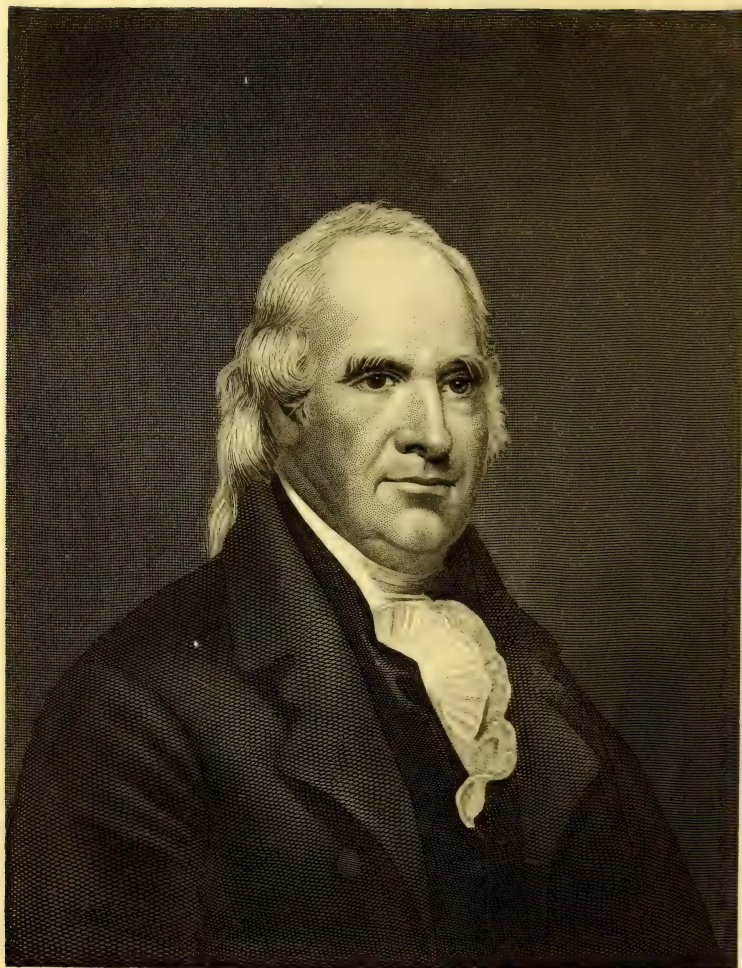












*Geo. Clinton*

#### GEORGE CLINTON

George Clinton, 1st and 3rd governor (1777-1795; 1801-1804) and vice-president of the United States; born in Little Britain, Ulster county, N. Y., July 26, 1739; lawyer, clerk of court of common pleas, New York City; member of state assembly, 1768; elected governor, June 1777; at close of eight successive terms retired from public life until 1801, when again elected; served until 1804, when elected vice-president, dying in office April 20, 1812, in the City of Washington, D. C.



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HISTORY  
OF THE  
STATE OF NEW YORK  
POLITICAL AND GOVERNMENTAL

EDITED BY  
RAY B. SMITH



VOLUME I  
1776 - 1822  
BY  
WILLIS FLETCHER JOHNSON

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1922

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## CONTENTS OF VOLUME I

## CHAPTER I

## COLONIAL ANTECEDENTS

Natural advantages.....	17
Characteristics of the people.....	19
Beginning of real political organization, 1683.....	21
Inter-Colonial convention at Albany, 1754.....	22
Rise of opposition to British misgovernment.....	24
The Stamp act.....	26
Sons of Liberty; battle of Golden Hill.....	29
The Tea ships.....	30
Non-importation .....	32
The last Colonial Assembly under the Crown.....	35
Preliminaries to Independence.....	36
The Declaration.....	38
Founding the State.....	39

## CHAPTER II, 1776-1777

## ORGANIZING THE STATE

New York City the theater of war.....	41
Battle of Long Island.....	42
Perambulations of the State government.....	43
Making of the Constitution.....	44
Jay and his work.....	46
General provisions of the Constitution.....	48
Restriction of the franchise.....	49
Administrative functions.....	50
The judiciary.....	52
Report of the Constitution to the Convention.....	53
Failure of the Anti-slavery amendment.....	54
The Constitution adopted and promulgated.....	55

## CHAPTER III, 1777-1781

## THE FIRST GOVERNOR

George Clinton .....	58
Candidates for the Governorship.....	57
Clinton's election .....	60
Inauguration at Kingston.....	61
The First Legislature.....	62
Ceremonies and amenities.....	63
The fall of the Highlands forts.....	64
Further perambulations.....	65
Ratification of the Articles of Confederation.....	67
Early legislative acts.....	68

Second session of the Legislature.....	69
Vermont's insurgency.....	70
Third session.....	72
The Fourth Legislature.....	73
Clinton reelected.....	75

## CHAPTER IV, 1781-1788

### FROM WAR TO PEACE

The Fifth Legislature.....	76
Controversies .....	77
The Sixth Legislature.....	78
Alexander Hamilton's resolutions of 1782.....	80
Peace with Great Britain.....	82
Clinton's third election; the Seventh Legislature.....	83
The Eighth Legislature.....	85
The Ninth Legislature.....	87
Fourth election of Clinton; the Tenth Legislature.....	89
The Eleventh Legislature.....	90

## CHAPTER V, 1778-1788

### THE RISE OF PARTIES

Patriots and loyalists.....	91
Governor Clinton's hostility to the tories.....	92
The exodus.....	93
Imposition of disqualifications.....	94
State Rights <i>vs.</i> National Sovereignty.....	95
The question of the revenues.....	96
Clinton's great contest with Congress.....	97
Hamilton's attitude.....	99
The Annapolis convention.....	102
Election of Delegates to Philadelphia.....	103
The National Constitutional convention of 1787.....	104
The Poughkeepsie convention.....	106
Clinton's discomfiture.....	108

## CHAPTER VI, 1788-1792

### UNDER THE CONSTITUTION

The Twelfth Legislature.....	109
Federalists and Anti-Federalists.....	111
Clinton elected Governor for the fifth time.....	113
Hamilton and Jay in the National government.....	114
The Thirteenth Legislature.....	115
The first United States Senators.....	116
Aaron Burr .....	117
Philip Schuyler's two offices.....	119
John Lansing .....	121
The Fourteenth Legislature.....	122
The Livingstons.....	123

Burr becomes Senator.....	125
The Fifteenth and Sixteenth Legislatures.....	126, 127

## CHAPTER VII, 1792-1795

### CLINTON AND JAY

Governor Clinton seeks a sixth election.....	128
The Federalists nominate John Jay.....	129
Scandals .....	130
A disputed election.....	133
Clinton awarded the office.....	136
Burr's part in the result.....	137
Federalist success in 1793; Citizen Genet.....	141
The Seventeenth Legislature.....	142
The Council of Appointment.....	143
The Eighteenth Legislature.....	146
First appropriation for primary schools.....	148
Clinton retires.....	149

## CHAPTER VIII, 1795-1798

### JOHN JAY

The State campaign of 1795.....	150
Jay elected Governor.....	152
Jay's treaty.....	153
Rise of the Democracy; the Nineteenth Legislature.....	155
Governor Jay's recommendations.....	156
Anti-slavery again suffers defeat.....	158
Census of 1796.....	159
Federalist success continues; the Twentieth Legislature.....	160
John Adams elected President.....	161
The Twenty-first Legislature.....	163
John Sloss Hobart elected Senator.....	164
Robert R. Livingston.....	168
Jay reelected.....	171

## CHAPTER IX, 1798-1800

### JAY'S SECOND TERM

Troubles with France.....	172
Governor Jay's support of President Adams.....	173
The Twenty-second Legislature.....	174
Party strife and machinations.....	176
The Virginia and Kentucky resolutions.....	177
Burr's Water bill.....	182
Effects of the Alien and Sedition laws.....	183
Democratic triumph in the spring of 1800.....	185
Hamilton's activities; the Twenty-third Legislature.....	187
Gouverneur Morris, Senator.....	190
Jay rejects Hamilton's advice.....	193
The Presidential election of 1800—Jefferson's victory.....	196



The Twenty-fourth Legislature.....	198
Jay declines a third nomination.....	202

## CHAPTER X, 1801

### THE SPOILS SYSTEM

Jay and the Council of Appointment.....	203
George Clinton's seventh election as Governor.....	210
The Constitutional convention of 1801.....	210
DeWitt Clinton upholds the Council.....	212
Governor Clinton's moderation.....	214
Domination of DeWitt Clinton.....	217
Newspaper polemics.....	222
"Aristides"—Van Ness and Cheetham.....	224
The Swartwout-Clinton duel.....	227
Other duels; "Lie on, Duane".....	228

## CHAPTER XI, 1802-1804

### THE SUPREME TRAGEDY

The Twenty-fifth Legislature.....	230
DeWitt Clinton elected Senator.....	232
Burr in disfavor with the Democrats.....	233
The Twenty-sixth Legislature.....	233
McClellan's defalcation.....	235
DeWitt Clinton appointed Mayor of New York City.....	236
The Twenty-seventh Legislature.....	237
Burr aspires to the Governorship.....	238
Morgan Lewis nominated by the Democrats.....	240
Hamilton antagonizes Burr.....	242
Lewis elected .....	245
Burr challenges Hamilton.....	246
The fatal duel.....	247
Hamilton's position in history.....	249, 250

## CHAPTER XII, 1804-1807

### THE NEW ERA

Governor Lewis's respectable mediocrity.....	252
James Kent appointed Chief-Justice.....	253
The Twenty-eighth Legislature.....	254
The Merchants' Bank.....	256
DeWitt Clinton at odds with Lewis.....	261
Tammany takes a hand; the Martling Men.....	264
The power of the Livingstons wanes.....	265
The Twenty-ninth Legislature.....	266
Lewis's apotheosis of the drum.....	266
Quarrels over appointments.....	267
Bribery and the law.....	269
The Federalists make a spurt.....	270

The Quids; the Thirtieth Legislature.....	272
Governor Lewis on the militia.....	273
The spoils machine continues its work.....	274
DeWitt Clinton removed from the Mayoralty.....	275
Daniel D. Tompkins nominated for Governor.....	277
Lewis runs in opposition.....	278
Triumph of Tompkins.....	279

## CHAPTER XIII, 1807-1810

### A "MAN OF THE PEOPLE"

Classical similitudes .....	281
DeWitt Clinton's curious mistake.....	282
Tompkins's personality.....	283
The Thirty-first Legislature.....	284
The embargo; DeWitt Clinton changes his view.....	285
Vice-President George Clinton and the Presidential succession.....	288
The Clintonian schemes go awry.....	289
The Thirty-second Legislature.....	290
George Clinton reëlected Vice-President.....	291
Abraham Van Vechten and Daniel Cady.....	294, 295
The Federalists carry the Assembly.....	296
The Thirty-third Legislature.....	298
The apostasy of Robert Williams.....	299
Governor Tompkins rebukes the Assembly.....	302
John Tayler's unseemly speech.....	304
Tompkins reëlected Governor.....	305
Democratic ascendancy again complete.....	306

## CHAPTER XIV, 1810-1812

### CLINTON'S AMBITION

DeWitt Clinton maintains the even tenor of his way.....	307
Tammany's hostility to him.....	308
The Thirty-fourth Legislature.....	310
DeWitt Clinton reappointed Mayor.....	311
He is elected Lieutenant-Governor.....	315
The Thirty-fifth Legislature.....	316
The famous prorogation.....	317
Death of Vice-President George Clinton.....	318
DeWitt Clinton's Presidential hopes.....	319
His nomination by the Federalists.....	321
The rise of Martin Van Buren.....	323
President Madison reëlected.....	324
The Thirty-sixth Legislature.....	325

## CHAPTER XV, 1811-1812

### CANALS AND BANKS

Clinton's mighty project.....	326
The first Canal commission.....	327

Congress cold and Tammany opposes.....	328
Corrupt bank schemes.....	329
The Bank of America jobsters.....	331
Clinton's silence.....	333
Tompkins tries a heroic method.....	334
After the prorogation; the Bank wins.....	337
The Commission on Common Schools.....	337

## CHAPTER XVI, 1812-1813

### PARTISANSHIP IN WAR TIME

The Federalists and the War of 1812.....	339
The Democrats as the War party.....	340
Rufus King returns to the Senate.....	342
The first Superintendent of Schools.....	342
Appointments and removals.....	343
The Bank of America again.....	345
Tompkins once more succeeds himself.....	349
His supreme position in the Democratic party.....	350
John Armstrong, weakling.....	351
Clinton retains the Mayoralty.....	352
Kent becomes Chancellor.....	353
Clinton's abandonment of Riker.....	354

## CHAPTER XVII, 1814-1816

### TOMPKINS'S THIRD TERM

Significance of Tompkins's third election.....	356
The Thirty-seventh Legislature.....	357
Federalist fault-finding.....	358
Eliphalet Nott's lottery.....	359
Democratic victory in 1814 heartens Washington.....	359
Fears for New York City; financial woes.....	361
The Governor endorses the notes.....	362
Exit Armstrong; Thirty-eighth Legislature.....	363
Defensive measures.....	364
The Hartford convention.....	365
New York abettors of the Hartford movement.....	366
Tompkins declines the Secretaryship of State.....	368
Democratic factional rivalries.....	369
Ambrose Spencer .....	370
Tompkins and Van Buren.....	372
The Coodies.....	374
Tammany still pursues Clinton.....	375
He is again ousted from the Mayoralty.....	376
The high tide of Tompkins's fortunes.....	377
The Thirty-ninth Legislature.....	379
A contested election of the olden time.....	379
Canal progress .....	382



## CHAPTER XVIII, 1816-1817

### TOMPKINS AND THE PRESIDENCY

Tompkins recommended to the Congressional caucus.....	383
His fourth election as Governor.....	384
Monroe and Crawford.....	385
Madison's influence against Tompkins.....	386
Van Buren and Spencer.....	387
Monroe nominated by the caucus.....	389
Tompkins for Vice-President.....	389
The Fortieth Legislature.....	390
The bill abolishing slavery.....	390
Tompkins resigns; becomes Vice-President.....	393
Taylor exercises the functions of Governor.....	393
Canal progress continues.....	394
A case of honest graft.....	395

## CHAPTER XIX, 1817

### THE TRIUMPH OF CLINTON

Canal success in sight.....	396
DeWitt Clinton to the fore.....	397
Ambrose Spencer's influence in his favor.....	398
Van Buren's dilemma.....	399
The Democrats nominate Clinton for Governor.....	401
The Bucktails; Clinton's overwhelming election.....	402
Curious aspects of the result.....	404
Governor Clinton's even course.....	405
Establishment of Thanksgiving day.....	406
"Making good" on the canal.....	407

## CHAPTER XX, 1818-1819

### DE WITT CLINTON, GOVERNOR

The Forty-first Legislature.....	408
Agricultural interests .....	409
Tammany and the Bucktails.....	410
Van Buren's adroitness.....	411
Growing opposition to the Council of Appointment.....	413
The Forty-second Legislature.....	414
Contest for Speaker.....	415
The Clintonians outgeneraled.....	416
They finally win a dubious victory.....	417
Reading Clinton out of the party.....	419
The futile Senatorial contest of 1819.....	421
The Bucktails become good Clintonians.....	422
Patronage makes a difference.....	423
Van Buren a victim of the spoils system.....	424

## CHAPTER XXI, 1819-1820

### THE PASSING OF TOMPKINS

Tompkins's accounts.....	426
The merits of the case.....	427
The Comptroller's view.....	429
The Forty-third Legislature.....	430
Justice Van Ness.....	431
Tompkins nominated for Governor by the Bucktails.....	432
Further consideration of the accounts.....	434
Federalists support Tompkins.....	437
DeWitt Clinton reelected Governor.....	438
Tompkins's unhappy end.....	438

## CHAPTER XXII, 1820-1821

### BUCKTAILS AGAINST CLINTON

Partisan activities.....	440
The question of a Constitutional convention.....	441
Abolition of the Council of Appointment favored by Clinton.....	442
"Skinner's Council" .....	443
Interferences of Federal office-holders.....	444
The Forty-fourth Legislature.....	445
The "Green Bag Message".....	445
Van Buren elected Senator.....	446
Constitutional convention bill passed.....	448
Offensive acts of the Council.....	448
Removal of Gideon Hawley.....	450
The people vote for a convention.....	451

## CHAPTER XXIII, 1821-1822

### A NEW CONSTITUTION

Election of Delegates to the convention.....	453
Abolition of the Council of Revision.....	454
Legislative and franchise reforms.....	455
Chancellor Kent opposes universal suffrage.....	456
Sweeping changes in the appointing power.....	457
The people ratify the new Constitution.....	458
The Forty-fifth Legislature.....	459
Approach of canal completion.....	460
Ulshoeffer's attack on the Governor.....	461
Abolition of the April elections.....	462
Tompkins unsuccessfully seeks vindication.....	464
Regular Democrats nominate Yates for Governor.....	466
Reasons for Clinton's elimination.....	467
Thurlow Weed's debut.....	468
Yates's great victory at the polls.....	469

For INDEX see end of Volume II

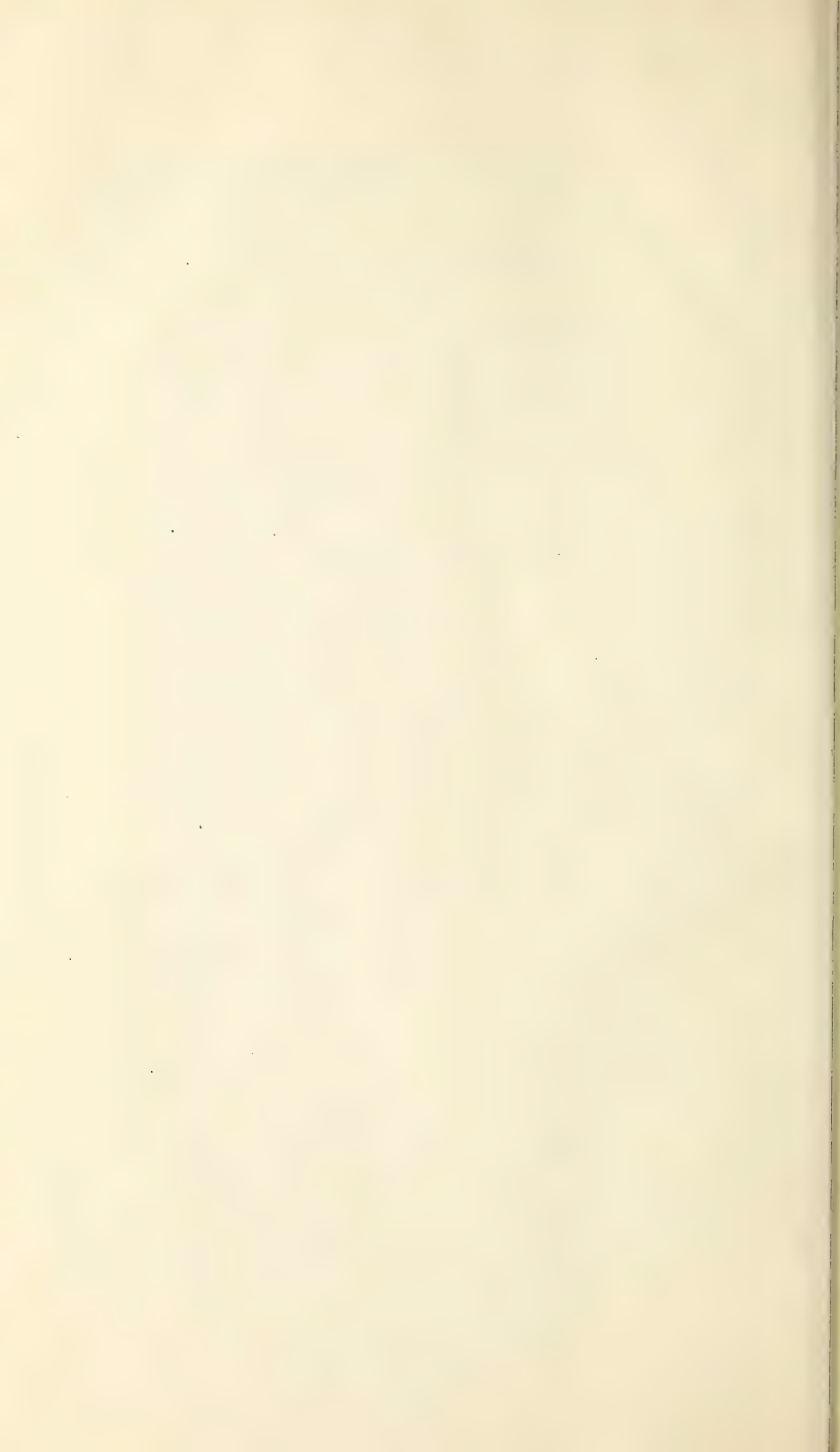
# ILLUSTRATIONS

with

## BIOGRAPHIES

Benson, Egbert.....	48
Burr, Aaron.....	176
Clinton, Dewitt.....	416
Clinton, George.....	Frontispiece
Cruger, John.....	32
Duane, James.....	80
Duer, William.....	96
Fish, Nicholas.....	304
Floyd, William.....	304
Fulton, Robert.....	336
Gallatin, Albert.....	208
Hamilton, Alexander.....	112
Jay, John.....	48
Jay, William.....	384
Kent, James.....	256
King, Rufus.....	160
Lansing, John, Jr.....	224
Lewis, Francis.....	96
Lewis, Morgan.....	240
Livingston, Edward.....	224
Livingston, Robert R.....	144
Macomb, Alexander.....	144
McDougall, Alexander.....	80
Montgomery, Richard.....	64
Morris, Gouverneur.....	192
Nott, Eliphalet.....	352
Porter, Peter B.....	432
Rutgers, Henry.....	192
Sanford, Nathan.....	448
Schuyler, Phillip.....	64
Smith, Melancton.....	128
Spencer, Ambrose.....	368
Stuyvesant, Peter.....	32
Taylor, John.....	400
Thompson, Smith.....	272
Tompkins, Daniel D.....	288
Van Cortlandt, Pierre, Jr.....	320
Van Rensselaer, Stephen.....	432
Walton, William.....	112
Willett, Marinus.....	320





## FOREWORD

The purpose of this work is to furnish to the public an authentic, thorough and dispassionate account of the political and governmental development and administration of the State of New York, including a careful and unbiased narration of the positions, fortunes and acts of its political parties; also, as supplementary to it, the fundamentals of National party and political history,—to which the special political history of our state, like that of every other state, is not only inter-related but subordinate.

It will be promptly conceded by every writer, publicist, educator, student or seeker for information who has had occasion to investigate any particular phase of political development of our State or Nation that it is only by an extended examination of numerous works of history and reference that anything like a comprehensive view of a specific situation can be obtained and even then, owing to the prevalent conflict of authorities, the result is unsatisfactory.

Our government is fundamentally and essentially a government by political parties, representative of the people and effectuating the will of the majority of the people as expressed at the polls. Any purported history of our Nation or State which fails to correctly depict the rise, growth and fall of our National parties and the issues which, through their victories or defeats, have been definitely settled by popular referendum is absurdly inadequate, necessarily misleading and is not entitled to recognition. It is lamentably true, how-

ever, that the writing of our general histories seems to have been left mainly to those who, through lack of practical experience in public affairs or a false perspective, have given but scant or superficial attention to the relations of political parties to public institutions and affairs. To correct in some measure this condition and to provide in a human, readable form a comprehensive, accurate and consecutive account of the development of the governmental agencies of our state and the records of the dominant political parties in their relation to state and national affairs is the task here undertaken.

The trite saying that "history repeats itself," when translated, means simply that, despite man-made, artificial environment and restrictive measures, there has been no essential change in the motives actuating the human race in social and governmental activities; consequently unless we have ready at hand for careful study and consideration an authentic account of the political happenings that have gone before we are disqualified at the outset, not only from expressing an intelligent opinion of the past but also from inspiring confidence in our judgment of the present or future.

Fully conscious of the importance of the task and of the responsibility assumed, I sincerely trust that this work, both in its general scheme and in its manner of execution, will commend itself to the public and will find a permanent niche in standard American historical literature.

R. B. S.



## CHAPTER 1

### COLONIAL ANTECEDENTS

NATURE seems to have designed, as the progress of both local and general events has certainly confirmed, New York as the Empire State—in population, industry, commerce, wealth, and social and political influence the foremost member of the American Union. Its geographical situation and its physical characteristics gave it preëminent advantages over all the other Colonies. Although exceeded in area by two others, its strategic place was indubitably supreme. Its territory extended, as did that of no other, from the Atlantic littoral to the Great Lakes. Upon the former it had the finest harbor in the whole continent, and upon the latter it had an extended frontage, while between the two it had an unrivalled natural highway for travel and trade, half the distance on a great arm of the sea navigable for ocean-going craft, and half across a level, rich, and well-watered country. Nowhere else, from Maine to Georgia, was access from the coast to the basin of the Great Lakes and to the valleys of the St. Lawrence and the Mississippi nearly as easy and as expeditious as through New York.

Climate and topography were comparable with situation. Midway between New England and the south, it had a moderate climate, and this, with its variety of soils, made it able to produce in abundance a greater number of the useful fruits of the earth than any of its

sister Colonies. Above the others, too, it was well wooded and well watered for purposes of both industry and commerce. These conditions fitted it to be self-sustaining and independent to a greater degree, perhaps, than any other; and made it capable of maintaining comfortably and prosperously a larger population than even those two which had a larger area.

Such supremacy in numbers it did not, however, enjoy at the beginning. During the Revolution it was probably one of the smaller Colonies. When the first census was taken, in 1790, it stood only fifth, having fewer than half as many inhabitants as Virginia, and being surpassed also by Pennsylvania, North Carolina, and Massachusetts. At the second census, in 1800, it had risen to third place and was exceeded in population by only Virginia and Pennsylvania. In 1810 it was second, with only Virginia exceeding it; and at every subsequent census it has stood first by a plurality which made rivalry by any other State seem quite hopeless.

The character of the aboriginal inhabitants must also be taken into account, perhaps not so much for its influence upon the development of the State as for its indication of the importance of its territory in pre-Columbian days. In other parts of the country there are more noteworthy material monuments of Indian life and civilization; but nowhere else did the social and political organization of the natives attain so high a degree, or were their religion, laws, and arts of civilization so elaborately developed, as among the Six Nations of the Long House. That confederacy not only possessed and occupied the greater part of the area of the present

State of New York, but it ruled supreme over all the tribes from the Atlantic to the Mississippi and from the St. Lawrence to the Tennessee. For a century preceding its statehood, New York was thus the seat of an Indian empire surpassed in importance and culture only by those of the Mayas, the Aztecs, and the Incas. North of the Rio Grande it was supreme.

It was, however, in the circumstances and character of its settlement and colonization that New York had the greatest advantage over its neighbors and received most deeply and puissantly the assured impress of potential empire. It was the one cosmopolitan Colony. Every other one was founded, settled, and developed by the British—chiefly by the English—and was under unbroken British rule from the beginning down to the Revolution. Of every other one the antecedents, traditions, sympathies, aspirations were all pure British. Every other one was substantially homogeneous in composition, for in New Jersey and Pennsylvania the considerable non-British elements were not sufficient materially to affect the political and social order. But New York was composite in race, in language, in religion, and in social and political traditions. It had been founded and settled by the Dutch, and for one-fourth of its ante-Revolutionary history had been a Dutch colony, under Dutch government. Then it had been acquired and further settled by the English, and for the remaining three-fourths of its colonial life it had been under British rule. In addition, it had received a considerable and very influential admixture of French colonists, of the very best type of the French nation of



that day. Thus at the time of the Revolution its population was tripartite, and each of the three elements inherited and cherished the language, the laws, the customs, the traditions, the ideals, and the religious faith and worship of its respective mother country.

The result was a degree of catholicity and liberality superior to that of most other Colonies. Massachusetts and Connecticut were intolerantly puritan, and Virginia was no less intolerantly cavalier. But New York was neither. The dominant elements, both ecclesiastical and civil, were the Dutch Reformed, the English Establishment, and the Huguenot. But the English Establishment in New York was far less bigoted and oppressive than in Virginia, and non-conformists and dissenters and all others flourished in peace and freedom.

At the same time, side by side with this notable degree of liberality, there prevailed in New York in some respects a higher degree of feudalism and arrogance than in any other Colony. Far more than any other, it was physically owned and was socially and politically dominated by great families, which maintained a quasi-baronial, almost semi-regal state. Some of these were Dutch, some were English or Scotch or Irish, and a few were French; while of course some through intermarriage blended all these stocks. The Colonial and Revolutionary history of New York is largely a history of the alliances and feuds of these families and their retainers, and indeed for many of its early years the story of the State of New York was marked deeply by the same influences.

The Colony which these circumstances marked and set apart as peculiar and unique among its neighbors was chartered as New Netherland by the Dutch government in 1614, and was in 1623 extensively settled by that enterprising and masterful people, both its present metropolis and its present capital being founded by them in that year. For half a century it remained in Dutch possession and developed Dutch institutions. Nevertheless, the English were already invading it from their adjacent Colonial possessions to such an extent that when its first Landtag or Legislature was formed and assembled, in 1653, it contained ten Dutch and nine English members, representing four Dutch and four English towns. In 1664 it was taken outright by the English and became New York, and with the exception of a very brief period it remained under British rule until the Revolution of 1776.

The real political organization of New York may be regarded as dating from 1683. At that time it was divided into twelve counties. With two of these we need not concern ourselves, since they were soon thereafter ceded to the Colonies to which they logically belonged. They were Cornwall, now a part of the State of Maine, and Dukes, now the insular portion of Massachusetts. The ten counties still contained in New York were New York, Kings, Queens, Richmond, Suffolk, Westchester, Dutchess, Orange, Ulster, and Albany. The five first named had boundaries which have continued practically unchanged down to recent years. The names of the others have remained upon the map, but their boundaries have been much changed

by the setting off of portions of their areas for the formation of new counties. Thereafter each county regarded itself as a semi-independent political and civic unit, and progressively developed its own characteristics. Each county differed to some extent, in some cases radically, from its neighbors, and thus another element of heterogeneity was added to those which have already been noted as characterizing the Colony as a whole.

During the ante-Revolutionary period this composite character of New York had two important effects. It made the Colony less inclined toward independence, or even toward revolution without independence, than some others, notably Massachusetts and Virginia; but it also made it one of the most aggressively and efficiently inclined toward some form of Colonial union. The first step in the latter direction, which was also, though then quite unconsciously and unintentionally, in the former direction, was taken in 1754. In that year, in view of the great war which was then beginning, and doubtless with a certain subconscious prescience of its epochal importance in Colonial affairs, seven of the Colonies sent delegates to a convention which was to consider the formation of a Colonial confederation, on the basis of articles drafted by Benjamin Franklin. The seven Colonies were New York, New Hampshire, Massachusetts, Rhode Island, Connecticut, Pennsylvania, and Maryland, and their delegates met in convention at Albany, in New York.

That was the first faint and unrecognized conception of the United States, and it occurred appropriately on



the soil of New York, partly because it was a convenient place midway between north and south, and partly because it was in a Colony so mixed and varying in sentiment and tendencies as to make its secure enlistment in such a movement as desirable as it might be difficult. It was indeed found that while a strong inclination toward Colonial confederation undoubtedly existed, the political sentiment of New York was much less unanimous than in any other Colony; a condition which increased in intensity with the passage of time and the development of events. The causes of this division of sentiment were not obscure or complex. The unequalled port facilities of New York and indeed of all the Hudson River towns made travel and communication between them and England easy, direct, and intimate; the frequent and numerous presence of British civil and military officials resulted in the maintenance of something like petty viceregal courts; and the great families with their vast hereditary estates created a domestic and social life not unlike that of England itself. These circumstances naturally and strongly tended toward loyalty to the crown. On the other hand the large and influential Dutch element, and the small but singularly efficient and influential Huguenot element, had no sentimental attachment to the British crown, the former indeed still cherishing some hostility toward it; and the mercantile element, which was constantly and rapidly growing in numbers and influence, resented the commercial disabilities and later the taxes

which the British government arbitrarily imposed. These factors increasingly made for the development of a spirit of local patriotism.

The first direct word of opposition, or of remonstrance, against British misgovernment was spoken on December 11, 1762, near the end of that fateful French and Indian-Seven Years' War which probably had a greater influence upon the affairs of the world than any other for several centuries, and in which were sown the unmistakable seeds of American independence. On the date named an earnest and protracted controversy over the tenure of office and the payment of salaries of Judges culminated in the adoption by the New York Colonial Assembly of a memorial to the king, urging the necessity of judicial independence and asking for a hearing upon the subject. This was followed during the next three years with other memorials, protesting against the sugar tax and other forms of that "taxation without representation" which had been devised to meet the expenses of the war. The memorials and addresses of Philip Livingston, William Bayard, and Frederick Philipse at this time were, indeed, not unworthy of rank by the side of those of Otis, Henry, Adams, and the other Massachusetts and Virginia statesmen who have enjoyed more popular prominence in history books, but who were no whit superior to their contemporaries of New York in patriotic spirit or in the power to give it expression. Nor were popular demonstrations of resentment at British oppression lacking. New York City, as a commercial center, was a favorite resort of British naval vessels for the purpose of impressing

merchant seamen into the service. When in June, 1764, four sailors were thus seized, the populace rose against the frigate whose officers had ordered the detestable job, seized the captain's barge, drew it ashore, and burned it; and the courts were conveniently unable to detect the perpetrators of the deed.

While therefore there was a larger proportion of British sympathizers—loyalists, or tories—in New York than in any other Colony, there was also a large number of patriots who were second to no others in all America in resistance to misgovernment, in clearness of vision of the coming contest, and in steadfast resolution and devotion to the cause of liberty, even to the extent, if necessary, of forcible separation from the mother country. Indeed, what we may consider the first really significant step toward separation was taken by the Colonial Assembly of New York on October 18, 1764. Ten years before, at Albany, as already related, New York had taken a leading part in the movement for a Colonial confederation. Now it took the initiative in making that confederation an agency of hostility to British rule. This the Assembly, in response to indubitable popular demands, did by investing a committee with authority to enter into correspondence with similar committees appointed by the other Colonial Assemblies, or with the Assemblies themselves in default of such committees, "on the subject matter of the act commonly called the Sugar act; of the act restraining paper bills of credit in the Colonies from being legal tender; of the several other acts of Parliament lately passed with relation to the trade of the northern Colonies; and also on



the subject of the impending dangers which threatened the Colonies of being taxed by laws to be passed in Great Britain." This was eight years in advance of Samuel Adams's famous motion at a Boston town meeting for the appointment of a Committee of Correspondence "to state the rights of the colonists."

Adams's action in 1772 is commonly credited with having led to the summoning of the first Continental Congress. The action of New York in 1764 led to the summoning of the first real Colonial Congress, though it was on the specific invitation of Massachusetts that the body met. This Congress assembled in New York City in October, 1765, and was participated in by all the Colonies but Virginia, North Carolina, and Georgia. Because of the marked division of popular sentiment, no election of Delegates to it was held in New York, but the Committee of Correspondence served as the Colony's representatives and as such took a leading part in the transactions. Three important instruments were adopted, of which two were written by New York men. James Otis of Massachusetts wrote the address to Parliament, but Philip Livingston of New York wrote the petition to the crown, and John Cruger of New York wrote the declaration of rights and grievances addressed to the people of both America and Great Britain, in which "the right of taxing themselves either personally or by representatives of their own choosing, the right of trial by jury, and the right of petition" were claimed as inalienably belonging to the colonists.

While this Congress was in session the Stamp act went into effect, and the merchants of New York took

the lead in opposition and even in physical resistance to it. A committee was formed to seek the coöperation of the other Colonies, and it was publicly advertised that the persons and properties of all who distributed or used the obnoxious stamped paper would be in grave peril. The royal Lieutenant-Governor, Cadwallader Colden, and Lord Bute, the British Minister who was held chiefly responsible for the policy of the government, were hanged and burned in effigy in The Fields, now City Hall Park; Colden's state coach was also burned; the cannon at the Battery were spiked; and the house of the commander of the royal artillery was sacked, its contents were burned, and the colors of the regiment were seized and carried away by the mob.

This was no irresponsible mob. It was led by some of the best men of New York, and its work was followed up with further less violent but no less resolute and effective action. The "Sons of Liberty," led by Isaac Sears, Marinus Willett, John Lamb, and Alexander McDougall, took the lead in a systematic propaganda against the Stamp act. John Cruger, then Mayor of the city, Robert R. Livingston, John Stevens, and Beverly Robinson called upon Colden and demanded assurances that the stamps and stamped paper would not be used. The Common Council demanded that Colden surrender the stamps to it, which he did; and Colden wrote to the British ministry that the action of New York was being watched by the other Colonies and would be followed by them as an example. Neither Colden nor Sir Henry Moore, who became Governor in that same month, made any attempt to distribute or sell

the stamps, and the law remained unenforced until its repeal in the following March. That repeal was greeted in New York with joy as great as the wrath which had been manifested at the adoption of the act. Statues of George III and William Pitt were erected, at Bowling Green and in Wall Street respectively, and a great "liberty pole" was set up at the Battery. Bonfires, music, and public feastings further emphasized the gratification and exultation of a people who sincerely wished to remain loyal to their king but who valued liberty and the rights of British subjects more highly than their allegiance to the crown.

Joy was, however, short lived. A few months later violent antagonism was renewed over the action of the British government in quartering troops in New York at New York's expense. British soldiers cut down the liberty pole and wounded with their bayonets several citizens who were trying to put it up again—the first blood of American patriots shed by British soldiers in the Revolution. Twice the Assembly refused the appropriations which the Governor demanded for payment of the expenses of the troops, and in retaliation Parliament, in June, 1767, forbade the Assembly to pass any other act until it had made provision for the troops. The Assembly was resolute, and for the remainder of its legal life did nothing.

But the arbitrary British prohibition invoked its own Nemesis. A new Assembly was elected in 1768, in which the patriotic party was still stronger than in the old one, and in which the significant and formidable figures of Philip Schuyler of Albany and George Clin-



ton of Ulster first appeared and assumed leadership. Schuyler drafted (probably) and the Assembly adopted a memorial condemning the interference of Parliament with the Assembly as unconstitutional and declaring that the power and authority of the Assembly could not be lawfully suspended or abridged by any power whatsoever, save only the prerogative of the crown to prorogue and to dissolve it. Three days later the Governor took the Assembly at its word and dissolved it as a body too dangerous to be tolerated. So the strife continued, fluctuating but generally increasing in intensity and violence, both between the Americans and the British soldiers and functionaries and also between the two factions of Americans. The De Lanceys, Philippses, and some other great families staunchly supported the British government, even in its most arbitrary and purblind policies, while the Schuylers, Livingstons, Clintons, and others were leaders of the patriotic opposition.

The "Sons of Liberty," the "Mohawks," and other organizations increased their activities, not hesitating on occasion to measure strength with the soldiery. On January 18, 1770, occurred the "battle" of Golden Hill, on John Street between William and Cliff streets, and the next day a sailor was fatally bayoneted by a British soldier, the first life lost in the Revolution. There followed three years later a grave contest over the attempt to import taxed tea. In the fall of 1773 the "Sons of Liberty" and "Mohawks" kept a continuous watch for the expected coming of tea-laden vessels, with the purpose of driving them away if not of destroying them,

and a new Committee of Correspondence, which was in effect a vigilance committee, was organized. A New York merchant who had declared in favor of landing the tea in spite of the "rebels" was burned in effigy, and a proclamation was made by the "Sons of Liberty" that any one who should aid in landing the tea, or cart it, or buy it, would be regarded as "an enemy of the liberties of America."

Boston has the historic honor of having been the scene of the "tea party," when, in December, 1773, her citizens disguised as Indians threw overboard the obnoxious cargo of taxed tea which had been sent to that port. But it was only through a chance freak of the weather that New York lost that distinction. The tea ships designed for New York should have reached that port before the other reached Boston, and had they done so their reception would have been probably even more strenuously rude than that of their consort at Boston. But they were blown out of their course by storms, put in at Antigua for safety and repairs, and did not reach New York until the following April. The "Nancy," first to arrive, was stopped in the Lower Bay and held there for a week without unloading a pound of tea. The "London," her consort, arrived a day later with a cargo of tea brought in by her captain as a private speculation. The Committee of Correspondence stopped her, declared her cargo confiscated, threw every case of the tea into the river, and sent the captain home to England on the "Nancy," which sailed at the end of a week.

These were strenuous doings. But they were not altogether approved, even by some of the most earnest patriots. Conservatism was strong in New York City at that early date, and there was a widespread feeling that more orderly procedure was needed than that of the Vigilance Committee. Accordingly in May of that year, a few weeks after the tea ships episode, a new Committee of Fifty-One was formed, partly for the purpose of restraining the radicalism of the "Sons of Liberty" but chiefly for that of directing radical energies into more methodical channels. Already, in April, Isaac Sears and Alexander McDougall had written, in the name of the Vigilance Committee, to the Boston leaders, pledging the support of New York in any measures which might be adopted. On May 23 the new committee was organized, and it entered forthwith upon the work of corresponding with the other Colonies. This function was entrusted to a sub-committee consisting of Isaac Low, James Duane, and John Jay. Alexander McDougall was at first a member, but he resigned from it when the others would not agree to his scheme of first of all stopping all trade with England, and when they repudiated the letter which he and Sears had sent to Boston.

This sub-committee on the evening of May 23 performed an epochal act. This was the adoption of a letter, written by John Jay, addressed to the leaders in Boston, urging that there should be called at once "a Congress of Deputies from the Colonies in general," at which unanimous action should be agreed upon, not only concerning the closing of the port of Boston but



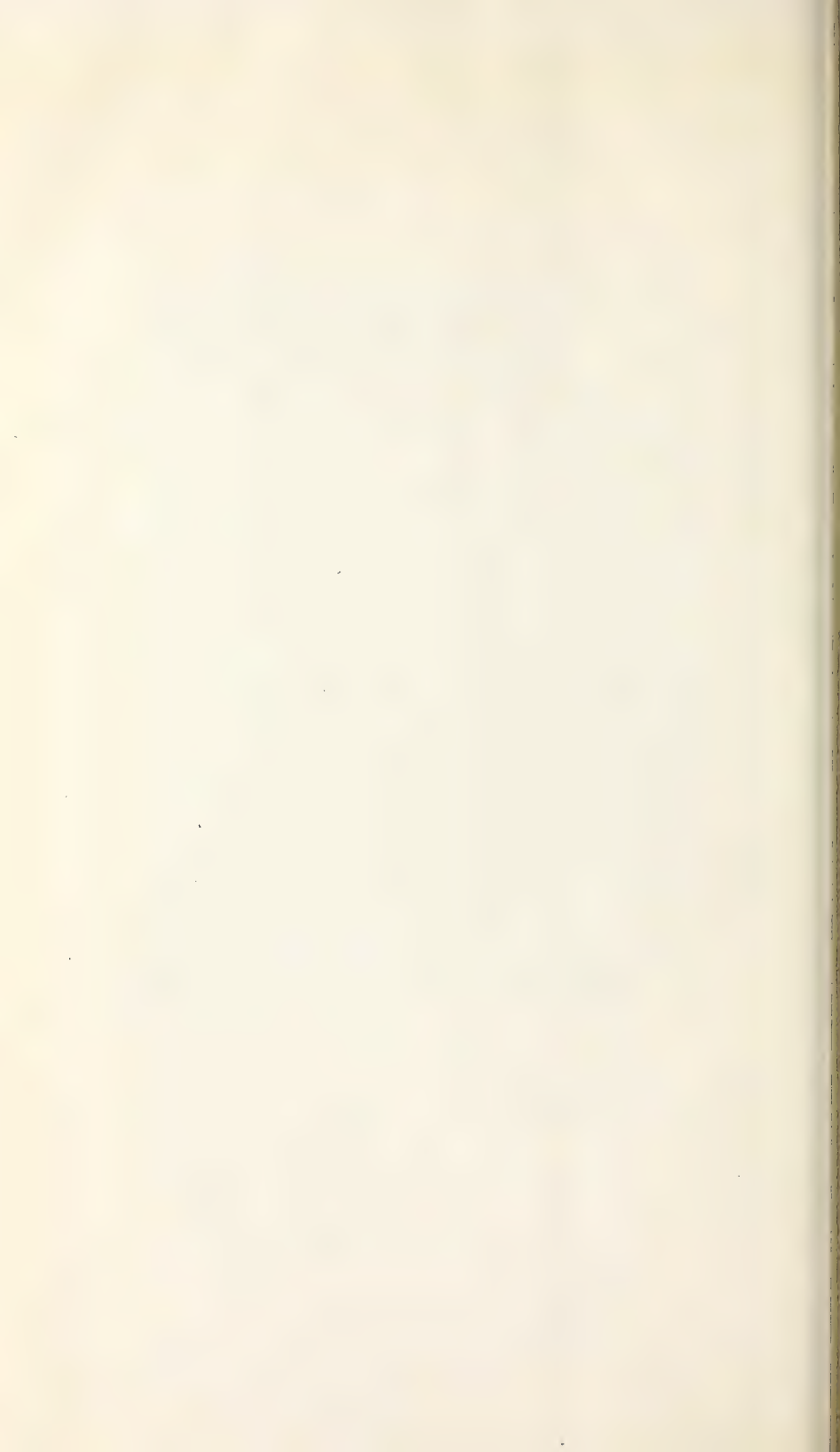
also "for the security of our common rights." To this body, Jay added, should be left the question of the advisability of adopting a non-importation agreement by all the Colonies. This letter, rather than Adams's motion in 1772, already referred to, was the real initiative of the first Continental Congress. It was the first practical suggestion of united action for the common welfare of all. It did not instantly evoke a favorable response, but it is noteworthy that its author and his colleagues had so much faith in its ultimate success that they promptly issued a call for a meeting on July 19, at which Delegates to the proposed Congress should be chosen. It may be added that the Connecticut Committee of Correspondence concurred in the scheme on June 4, Rhode Island through its General Assembly on June 15, the General Court of Massachusetts on June 17, and a citizens' meeting at Philadelphia on June 18.

The "Sons of Liberty" in the Vigilance Committee were not willing, however, to relinquish the leadership to the Committee of Fifty-One without a struggle. Accordingly they issued an unsigned call for a popular meeting in The Fields on the evening of July 6. At this gathering McDougall presided, and speeches were made and resolutions adopted in favor of resenting the closing of the port of Boston by stopping all commercial intercourse with Great Britain. The meeting is chiefly remembered, however, because it was interrupted by a young college undergraduate, who forced his way upon the platform and made an address uninvited and unin-

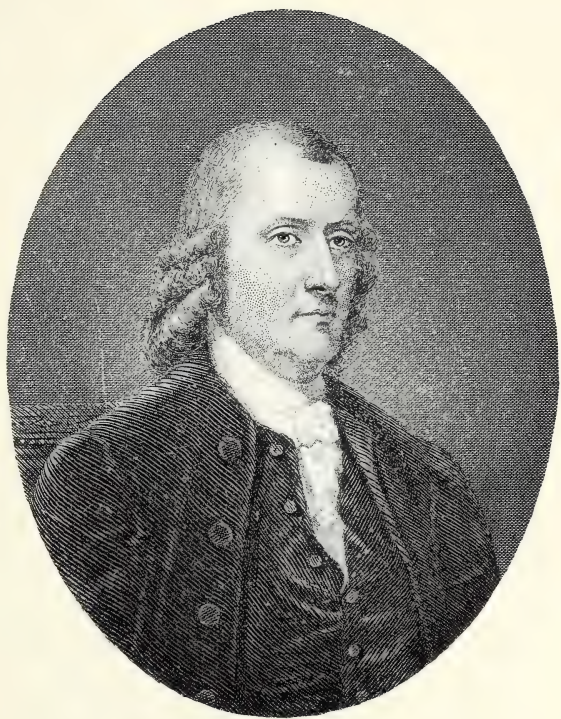


PETER STUYVESANT

Peter Stuyvesant, Dutch Governor of New Amsterdam; born in Holland, 1592; traveled and fought in the West Indies; appointed director general of New Amsterdam July 28, 1646 and took possession May 11, 1647; superceded by Richard Nicolls when Charles II gave the province to his brother, James, Duke of York, September 8, 1664; died in New York City, August, 1682.







JOHN CRUGER

John Cruger, colonial mayor of New York City; born in New York City July 18, 1710; shipping merchant; alderman of dock ward, 1754; mayor, 1739-1743, 1757-1765; member general assembly, 1759-1768; speaker last colonial assembly, 1769-75; retired to Kinderhook during the war but afterward returned to New York City where he died, December 27, 1792.



troduced, which was for eloquence and power decidedly the chief speech of the occasion. That lad was Alexander Hamilton.

The retort of the Committee of Fifty-One came promptly and sharp the next morning. It condemned the meeting and its resolutions as calculated to "excite disunion among our fellow-citizens," which had doubtless been their purpose. It also appointed a new committee, including McDougall and Sears, to draft new resolutions. McDougall and Sears refused to serve, and with nine of their comrades withdrew from the Committee of Fifty-One. A new committee was then named, with Jay as a member, and it reported resolutions declaring an earnest desire to remain British subjects, but condemning the closing of the port of Boston as "subversive of every idea of British liberty," and leaving the method of dealing therewith to the Continental Congress which was to be constituted. These resolutions were adopted by the whole committee, and it was decided to present at the meeting of July 19 the names of Philip Livingston, John Alsop, Isaac Low, James Duane, and John Jay as candidates for membership in the Continental Congress. At the meeting all five were elected, in spite of a determined effort by the remains of the Vigilance Committee to substitute McDougall for Jay. Delegates were also chosen by Kings, Suffolk, and Orange counties—Simon Boerum, William Floyd, and John Haring, respectively; Queens county and Richmond held aloof, and the other communities up the Hudson, including Albany, requested the New York City Delegates to represent them also.



The resolutions were, however, rejected by the meeting of July 19, and for that reason all the Delegates except Duane refused to accept their election; for the additional reason, also, that they did not consider the meeting fairly representative of the citizenship of New York, and thought that the Delegates should be chosen at a regularly held election. Accordingly an election was held, with polling places in each ward, on July 28; and thereat the four candidates were unanimously elected.

Thus was harmony restored between the two parties or factions which had arisen and which for a time had threatened by their discordant rivalry seriously to compromise the patriot cause. Livingston and Jay (who was married to a daughter of William Livingston) were leaders of the aristocracy, of the great families, the landed proprietors, and the merchants, while Sears and McDougall represented the democracy, the mechanics, and petty tradesmen. From this time forward until after the Revolution, partisanship was largely submerged by the rising tide of patriotism.

In the Continental Congress the New York Delegates filled an honorable place. Duane took the lead in favoring recognition of the Navigation acts, though John Adams actually made the motion to that effect. Livingston and Jay were members of the committee on the Declaration of Rights, of which Richard Henry Lee was chairman, and it was Jay who drafted that memorable document. He also wrote the no less notable Address of Congress to the People of Great Britain, which Jefferson, before he knew the authorship, enthu-

siastically declared to be "a production of the finest pen in America," as indeed it was. It is to be recalled that the Congress took action in favor of the non-importation which McDougall and the Sons of Liberty had been advocating, and in consequence the Delegates on their return to New York were publicly commended in the strongest manner by their former critics and opponents of the democratic side. Jay himself was unanimously elected a member of a new Committee of Sixty, which superseded the Committee of Fifty-One and which was specially charged with the work of enforcing the non-importation rule.

Meantime the New York Colonial Assembly was the scene of almost incessant strife between the patriots and the loyalists, or tories, and was in membership almost equally divided between them, though the tories usually had a majority. It refused to consider the proceedings of the Congress, or to thank the New York Delegates for their services, or to publish the correspondence between New York and Connecticut and with Edmund Burke, or to thank the merchants for supporting the non-importation agreement. It also refused to consider the question of electing Delegates to the second session of Congress, in May, 1775; and then it performed its last act of grace by committing suicide. On April 3, 1775, it adjourned to May 3, and it never met again.

Upon the refusal of the moribund Assembly to provide for the election of Delegates to the Congress, the Committee of Sixty, or of Inspection, as it was officially called, assumed that authority, and it accordingly issued a call to the various counties to elect another committee,

consisting of one hundred members representing all parts of the Colony. This was known as the Committee of Observation, but was really a Committee of Public Safety. It was to elect Delegates to the Continental Congress, and was also to organize a Provincial Congress to take the place of the old Assembly. Queens county, being under tory control, refused to participate in this movement, but the nine other counties now within the limits of the State responded. The committee met in New York on April 28 and reappointed the former Delegates to Congress, adding to their number five more congenial spirits: Philip Schuyler, Robert R. Livingston, Lewis Morris, Francis Lewis, and George Clinton.

The Provincial Congress, which met in New York on May 22, 1775, was a prudent and conservative body of eighty-one members. Gouverneur Morris, then only twenty-three years of age, was a delegate from Westchester county, and as such not only came for the first time into public prominence, but became one of the leaders of the body. It adopted resolutions favoring conciliation and continued union with Great Britain, disapproving the invasion of Canada, and looking to the Continental Congress for leadership and direction on all important matters. As yet, it must be remembered, the fateful word "independence" had not been spoken at Philadelphia. On the contrary, nearly all the continental leaders were outspoken in their declarations of loyalty to the crown. One other incident of the first session of the New York Provincial Congress must be recalled. On the initiative of Morris it suggested the



issue of paper currency by the various Colonies, each Colony being responsible for the redemption in gold of all that it issued, but the entire issue to be guaranteed by the Continental Congress. That was the origin of the Continental currency.

After a session of some weeks, the Provincial Congress adjourned, and a new body of like character was called to meet in the fall. On the appointed day in October no quorum was present, and it was not until December 6 that organization could be effected. Even then the tory counties of Queens and Richmond were unrepresented. This manifestation of hostility enraged the patriots in the Provincial Congress, and it was proposed to take harsh measures, comprising imprisonment or exile, against the tory leaders, beginning with Governor Tryon himself. To avoid such fate Tryon took refuge on a British warship.

That winter it was strongly recommended by the Continental Congress at Philadelphia that the various Colonies should take strenuous steps for the suppression of toryism and all disaffection, a recommendation perhaps chiefly suggested by the conduct of the tories of Queens, Richmond, and other counties of New York. Again, on May 15, 1776, it urged the Colonies to adopt new and permanent State governments, doubtless in this also having New York especially in mind. Meantime New York had elected a new Provincial Congress and had elected John Jay a member of it, although he was at the same time a member of the Continental Congress. This New York body met at the New York City Hall

on May 14, and immediately voted Jay leave of absence from his duties at Philadelphia and summoned him to New York to advise and assist in its deliberations. It was undoubtedly well for New York that Jay was summoned, although he was thus prevented from taking part in the debate upon independence and from being one of the signers of the Declaration.

Jay reached New York on May 25, and at once became by common consent the leader of the Provincial Congress, particularly in all matters relating to the Continental Congress and its doings. It was on his initiative that as late as June 11 a resolution was adopted declaring it to be the sense of the Provincial Congress that the people had not authorized it or their Delegates at Philadelphia to declare the Colony to be independent of the British crown. Jay was confirmed in this by his colleague, Duane, who wrote him from Philadelphia that Patrick Henry and the other Virginians were opposed to independence and that it was manifestly desirable to await a more definite popular mandate before venturing upon so radical a course. Nevertheless, on June 7 the Continental Congress had begun to consider the question of a declaration of independence, a fact of which Jay was probably not yet informed on June 11.

Meantime the menace of British occupation of New York increased and the patriots took all possible measures for defense, and also for escape in case defense proved impossible. The Colonial records were hastily

sent up the river to Kingston, with the purpose of making that place, comparatively secure from the British fleet, at least the temporary capital of the Colony, and the Provincial Congress—a new one, elected on June 19 and not yet convened—prepared to follow it thither.

That body did not, however, immediately proceed to Kingston. It paused for a time at White Plains, in Westchester county, and there organized and performed the most important act of its entire career. It was on July 9 that it met in the White Plains court house. Five days before, the Continental Congress had adopted the Declaration of Independence. The news of that epochal achievement had been hurried across country by express riders, and the text of the declaration had been read at New York and at Albany. It had been received with manifestations of popular approval and exultation so general and so emphatic as to warrant the belief that it would be ratified by the vast majority of the people of the Colony. That view was taken of it when, on the afternoon of July 9, it was laid before the Provincial Congress at White Plains.

Every eye was naturally turned toward John Jay, to see his attitude toward the momentous instrument, and then by unanimous vote the Declaration was referred to him, or to a committee of which he was the chairman, for consideration. An hour later it was reported back with a proposed resolution drafted by Jay, unreservedly approving the Declaration though deploring the necessity for it and authorizing the New York Delegates at Philadelphia to sign it. Thus was the Colony irre-



vocably committed to the common cause of union and independence. The next day, July 10, 1776, the Provincial Congress changed its own official title to that of "Convention of the Representatives of the STATE OF NEW YORK." The Empire State was born.

## CHAPTER II

### ORGANIZING THE STATE

THE State of New York, we have said, was born at White Plains on July 10, 1776. That was not, however, to be the birth date of record, nor was the birthplace to be the permanent seat of government. On that same day the Convention of the Representatives of the State of New York adopted a resolution declaring that the sovereign and independent State of New York had begun its existence on April 20, 1775, that being the date on which the first independent Provincial Convention, summoned by the Committee of Sixty without regard to the British Governor and composed of representatives of nine counties, had met in New York City and elected Delegates to the Continental Congress.

This adoption of a date was entirely logical, despite its somewhat *ex post facto* appearance. So, too, with the logic of events, was the action of the Convention in choosing its place of meeting. At the very moment of this epochal assembly at White Plains, British ships of war were lying in the Hudson River at Tarrytown, only a few miles away, and raiding parties landed from them were threatening White Plains with capture. The city of New York, however, was still in patriot hands and was still the American headquarters. Washington himself, with his ablest aids, had come thither from Boston in mid-April and had gathered there such an army as he could to resist the blow which the British

were obviously preparing to deliver at that strategic point. For Admiral Howe and his brother, General Howe, with fleet and army, were in the Lower Bay; Clinton was coming up to join them from his ineffectual attack upon the palmetto fortifications of Charleston, Cornwallis accompanying him; and Carleton was preparing for a descent from the north.

In these circumstances, both prudence and courage prevailed. The archives of the State were sent up the Hudson to Kingston, and preparations were made to defend the river against the penetration of any British expedition to that place; but the Convention itself resolved to remain near Washington in his desperate endeavor to hold his ground against the British onset. It therefore continued to sit in the White Plains court house until July 27, when it adjourned to reassemble two days later on Manhattan Island. It did not, it is true, go down to New York City proper, but halted at Harlem, and there for just a month held its sessions in a church.

The battle of Long Island was fought on August 27, and the result made it obviously prudent for the Convention to retire from what was to be the next firing line. Accordingly on August 29 it adjourned, to meet at Fishkill on September 5. It there first assembled in the Protestant Episcopal church, but found that building unfit for occupancy, being "very foul with the dung of doves and fowls, without any benches, seats, or other conveniences." So it adopted the Dutch church as its meeting place. On September 7 it took a recess of a week, but was again in session from September 14 to



October 5, on October 15, on December 5 and 6, and on February 11, 1777.

On this last date it resolved to follow the archives to Kingston and to make that place the seat of government. Accordingly it adjourned at Fishkill, and reassembled at Kingston on March 6, held a most important session for more than two months, and finally adjourned *sine die* on May 13, to be succeeded by the first constitutional Legislature of the State of New York. During all this period, amid the vicissitudes of the Convention, and especially during its various recesses, a Committee of Safety, with plenary powers, was maintained. It had been constituted by the first Provincial Congress on July 8, 1775, and it continued in existence until the final session of the Convention at Kingston in March, 1777. Its meetings were at New York City until August 20, 1776; at Harlem on August 27 and 28; at Kingsbridge on August 30; at Philipse's Manor, near Tarrytown, on August 31; at Fishkill until February 15, 1777; and at Kingston until March 5, when it surrendered its stewardship to the Convention.

It was in such difficult and hazardous circumstances as these that the first Constitution of the State of New York was framed. The Convention itself wisely did not undertake the task. At that memorable session of July 10, 1776, in the little old White Plains court house, it provided a tentative system of jurisprudence by formally declaring that until further notice the common law and statutes of England, just as they had been in force in the Colony on April 19, 1775—the day before the date assigned as the beginning of the new order of

affairs—should be in full force and effect in the State of New York. Nothing more was done until August 1. At that time, in session in the church at Harlem, the Convention appointed a special committee to prepare a draft of a permanent Constitution for the new State.

This committee was appointed on the motion of Gouverneur Morris, seconded by William Duer. Contrary to common practice, however, the maker of the motion was not designated as chairman of the committee, though he was a member of it. For the chairmanship John Jay was selected, doubtless the best choice that could possibly have been made. The other members, who among them represented the principal shades of political thought and also the chief political influences, were Gouverneur Morris, William Duer, Robert R. Livingston, Abraham Yates, Robert Yates, John Morin Scott, Colonel John Broome, John Sloss Hobart, Colonel Charles DeWitt, Samuel Townsend, William Smith, and Henry Wisner. The most radical tendencies in New York politics and policies were represented with masterful ability by John Morin Scott, while Morris, Livingston, and the Yateses were the pillars of conservatism.

John Jay, however, was the real Constitution maker. He was not merely the chairman of the committee, he was the committee. He was at that time thirty-one years of age, already recognized as one of the ablest lawyers in New York, the author of that address of the Continental Congress to the people of Great Britain which Thomas Jefferson, before he knew who had written it, declared to be "a production of the finest pen

in America." He came of a French family belonging to the commonalty rather than to the aristocracy, but allied through marriages with several of the most aristocratic and influential families of New York. He was thus neither conservative nor radical, but combined the desirable characteristics of both, together with an intellectual power, a purity of character, and a chivalric fervor of devotion which placed him in the very foremost rank of the founders not merely of the State of New York but no less of the United States of America.

It was on August 1 that the committee was appointed. The Convention ordered it to report the draft of Constitution in a fortnight, which was absurdly impossible. Jay was not even present in the Convention at that time, but was up in the Highlands of the Hudson assisting George Clinton to construct defenses to prevent the British from going up the river, seizing Kingston, and cutting the United States into two parts. There was no time for Constitution-making when a storm was about to break which might leave no State for which a Constitution would be needed. Moreover, a few weeks later Jay, Duer, and five others were appointed a committee "for inquiring into, detecting, and defeating conspiracies against the liberties of America." There was much need of such a committee, and it had much work to do. More than any other of the States, New York contained many British loyalists and many who were actively conspiring, intriguing, and otherwise working for British success. Jay and his colleagues were invested with plenary power to take summary action against all such, and with those duties they were

occupied much of the time until the end of February, 1777, when the committee was replaced by a commission.

As promptly as possible upon his release from these uncongenial duties, in the performance of which his transcendent abilities were not employed to the most profitable advantage, Jay addressed himself to the work of drafting the Constitution. He had among his colleagues on the committee men of high ability, who might have rendered effective coöperation, but he preferred to do the major part of the work alone. For that purpose he withdrew from the Convention, and indeed from all contact or communication with his colleagues, and in some sequestered retreat in the country devoted his undivided and undisturbed attention to the task.

Concerning his execution of that task some erroneous notions have prevailed. It has been said that he undertook the work "in an almost unexplored field." That is only in part true. If there were no other American State Constitutions before him for him to study, to imitate, or to improve upon, there were the British and Colonial systems, and perhaps also some other European systems, especially that of the Netherlands, from which it is unquestionable that he derived many of his ideas. It has also been said—by John Adams, on the authority of James Duane—that he used as his model and foundation a letter which Adams had written to George Wythe, prescribing a scheme of State constitutional government. It is probable that Jay did see that letter, but it is quite certain that it contained only a few rudimentary suggestions of the most obvious kind.

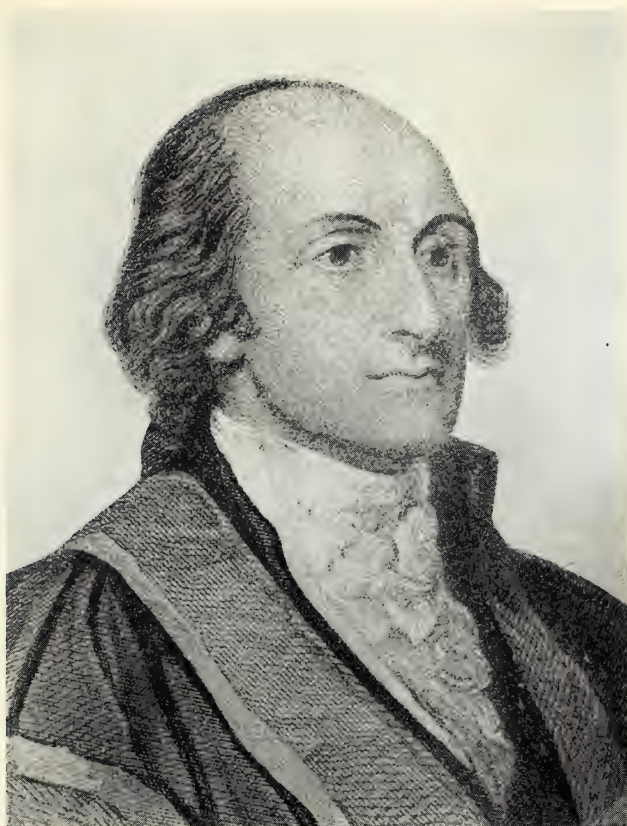


The fact doubtless is that Jay used as the basis of his draft the system of government which had prevailed in New York while it was a Province or a Colony of the British crown, deriving also some hints and suggestions from English and Dutch sources, and modifying and adapting their principles according to the lessons of experience and to what he conceived to be the needs of the new State. "We have," he wrote, "a government to form, and God knows what it will resemble. Our politicians, like some guests at a feast, are perplexed and undetermined which dish to prefer." He was himself much more conservative than he conceived the majority of the Convention to be. Indeed, the Convention seemed to him to be ultra-democratic. For this reason he did not deem it prudent to put into the draft of the Constitution some provisions which seemed to him desirable; but he held them in reserve, to be offered as amendments in the Convention if the temper of that body should indicate a possibility of their acceptance of them.

It was on February 27, 1777, that Jay was relieved of his labors as a tory-catcher by the dissolution of the committee, and he at once began work on the Constitution. It was almost exactly a month later that Duer reported the draft of that instrument from the committee to the Convention. The draft was entirely in Jay's handwriting. It was forthwith taken up by the Convention section by section, and was carefully considered and debated at great length. Only a few changes were made in it, and of these nearly all were proposed by Jay himself. It was an interesting circum-

stance that the two members of the Convention who most strongly disagreed on the most strongly debated points were its two ablest and most distinguished members and two close friends and neighbors, John Jay and Gouverneur Morris.

The Constitution provided for a government consisting of three coördinate branches, namely, the Legislative, the Executive, and the Judicial. This system had been suggested by Adams to Wythe in the letter already referred to, but it would be an untenable proposition that it there had its origin and that it was from that source that Jay derived it: the principle had long been familiar to the Anglo-Saxon race. It was provided that the legislative branch should consist of two chambers, a plan obviously modeled after the English Parliament, and perhaps also after the former Provincial Legislature; for while the latter had consisted of a single house, there was a Council exercising the functions of an upper house. The provisions that each house should be the judge of the qualifications of its own members, and that the lower house should choose its own Speaker, were also familiar principles of Colonial and British legislative organization. The composition of the two houses likewise followed established lines. The Senate was to consist of twenty-four members, chosen from four great districts into which the State should be divided: three from the Eastern, nine from the Southern, six from the Middle, and six from the Western. They were to serve for four years, and one-fourth were to be elected every year. The Assembly

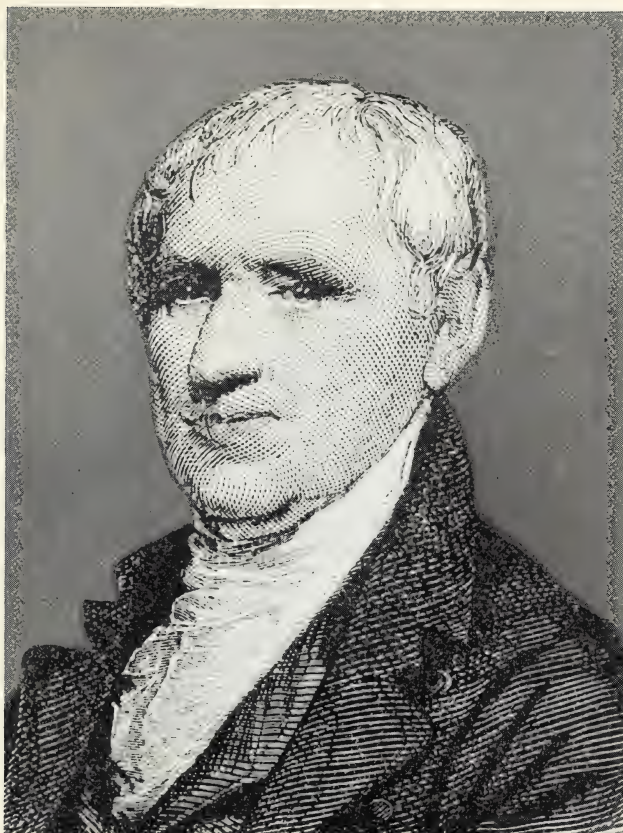


JOHN JAY

John Jay, 2d governor 1795-1801 and chief justice of the United States; born in New York City, December 12, 1745; delegate to continental congress, 1774; member 2d constitutional congress, 1775; delegate to New York provincial congress, 1776; drafted first state constitution; United States minister to Great Britain, 1794; in Paris with Benjamin Franklin, 1782-84; chief justice United States, 1789, 1800; elected governor, 1795; reëlected 1798; retired 1801; died May 17, 1829 in Bedford, Westchester county, N. Y.







EGBERT BENSON

Egbert Benson, jurist; born in New York City, June 21, 1746; lawyer; member of revolutionary committee of safety; in 1777 member of council of safety, and appointed first attorney general of the state; member of assembly, 1777-1781; continental congress, 1781, 1784, 1787, 1788; congress, 1789-1793; judge of supreme court, 1794-1801; judge of United States circuit court, 1801; again elected to congress and served from March 4, 1813, until August 2, 1813, when he resigned; first president of New York Historical Society; died at Jamaica, L. I., August 24, 1833.



was to contain seventy members, apportioned among the counties according to population, and elected for one year each.

The legislative franchise was restricted. True, the Constitution declared in its preamble that all power whatever in the State had reverted to the people thereof, and it might therefore have been supposed that there should be universal suffrage. But Jay held that the State should be governed by those who owned it; to-wit, those who owned the real estate. Therefore he prescribed in the Constitution that the right to vote for members of the Assembly should be exercised only by male citizens twenty-one years of age, paying taxes, and possessed of freeholds worth twenty pounds or holding tenancies worth forty shillings a year. In order to vote for Senators, and also for Governor, a man must have a freehold worth a hundred pounds above all indebtedness. We need not be surprised at the acceptance by the "ultra-democratic" Convention of these restrictions, which in our day would be condemned as intolerably aristocratic, when we remember that at that time New York had fully 40,000 citizens entitled to vote under these conditions, a much larger proportion than that in England at that time or at any time down to the Reform act. It does not appear that there was any considerable demand in New York for a more extended franchise, nor was the principle of indiscriminate and universal democracy anywhere seriously advocated.

The executive authority was to be wielded by a Governor, and in order that the principle of popular authority might be maintained it was provided that he should

be elected by direct vote of the citizens who were qualified to vote for State Senators. A Lieutenant-Governor was to be similarly and simultaneously elected, who was to be the presiding officer of the Senate and was to succeed the Governor in case of his death or disability. It was over the Governorship, its powers and limitations, that Jay was most troubled with uncertainties and fears, and it was in his—and the convention's—dealings with that office that the chief errors were committed. Morris, with clearer vision and more courage than Jay, was for making the Governor a real Chief Executive, with a veto power over legislation and with the power to appoint subordinate officers. But Jay seems to have been obsessed by memories of the abuses committed by autocratic royal Colonial Governors and by a fear that a Governor though chosen by the people would follow their example.

This apprehension was intensified by the circumstance that it was intended to have a large and important array of appointed officers. These were to include Mayors of cities, Sheriffs of counties, District Attorneys, and Coroners, as well as many State functionaries. Indeed, practically all officers were to be appointed, excepting of course the Legislature, the Governor and Lieutenant-Governor, the State Treasurer, and town officers. Obviously, the power which had the appointment of all these would exercise enormous influence. There were divided counsels in the committee and in the Convention. Some were for giving the Governor the absolute appointing power. Others more cautiously advocated a requirement that his appointments



should be passed upon, for confirmation or rejection, by the Legislature or by the Senate. Jay, however, devised and readily led the Convention to adopt a different plan from either of these; though in fact it was not made to work as he intended it. A Council of Appointment was to be constituted, consisting of four Senators, one from each of the districts, elected by the Assembly, with the Governor *ex-officio* its presiding officer. The Governor was, however, to have no vote, save the deciding vote in case of a tie. To this Council was to be given full power of appointment. It was Jay's intention that the Governor should nominate all the officers, and the Senatorial members of the Council should act upon them for confirmation or rejection. But in fact the nominations were made by the Council, which thus became at once a cumbrous and unsatisfactory arm of the government, and a peculiarly odious political machine. Bad as the system was, it was tolerated by the State for more than forty years.

A similar controversy arose and a similar blunder was made over the matter of the veto power. Despite the limited suffrage for members of the Legislature, there was a haunting fear of bad laws, and at the same time there was a disinclination to entrust the Governor with the veto power. Morris did, indeed, urge that the Governor should have such power, but again Jay disagreed with him, and, perhaps following the example of the Privy Council in Great Britain, proposed a Council of Revision, which the Convention adopted. This was a Council composed of the Governor, the Chancellor, and the Justices of the Supreme Court, and

to it were to be submitted all bills passed by the Legislature, before they became laws. If the Council failed to take any action upon a bill within ten days, it became law; while if the Council disapproved a bill, it might still become law through repassage by a two-thirds vote of each house. This Council was far less objectionable than the other. In fact, it served the State on the whole quite satisfactorily. But it too was abolished after more than forty years.

With these limitations the Governor, who was required to be a freeholder, was to hold office for three years and to exercise powers similar to those of the Colonial Governors who had preceded him. He was to be commander-in-chief of the army and navy. He was to have authority to call the Legislature together in special session, and to prorogue it for not more than sixty days in a year; and he was to deliver a message to it at the beginning of each session. He was to have the power to grant reprieves and pardons to convicted persons, save murderers and traitors, in whose cases he could merely suspend execution of the sentence until the Legislature had opportunity to act.

The third branch of State government, the judiciary, was of all most strangely treated in the Constitution. No general system of courts was provided. Indeed, the only court actually prescribed was that of Errors and Impeachment, which was to consist of the Lieutenant-Governor, the Senate, and the Justices of the Supreme Court, forming a tribunal modeled in part after the British House of Lords and partly, probably much more, after the former Colonial Council. All other

courts, of original jurisdiction, were simply recognized as being already in existence. The Supreme Court itself had only incidental mention, in a clause prescribing the tenure of office of its Justices. Trial by jury was to be maintained in all cases in which it had been guaranteed in the Colony, and land grants, charters, popular rights, legal customs, and practically the whole code of civil laws were similarly carried over from the Colony to the State, at least so far as they were compatible with independence of the crown.

It was on March 12, 1777, that William Duer reported Jay's holograph of the Constitution to the Convention, and immediately debate upon it began in committee of the whole. The first section was adopted in a few hours, but others were discussed at great length. A passage providing for voting by ballot at all elections was denounced and was ultimately rejected on motion of Gouverneur Morris; though Jay secured the adoption of an amendment providing for the use of ballots as soon as might be practicable after the war. It was recognized that this would be merely experimental, and a clause was added empowering the Legislature at any time after giving the ballot a fair trial to order the resumption of oral and public voting. As a matter of fact, however, a secret ballot law was enacted the very next year and was nine years later made compulsory in all elections of all State officers; and it was never repealed.

The greatest debate of all, probably, was over the question of religious liberty and equality. This at first may seem strange, seeing that New York had been one

of the most tolerant of all the Colonies and was one of the few which had not practiced persecution. Toleration had been a fundamental principle of the Dutch founders of New Netherland, and it had been preserved by their successors with jealous care. Jay himself was strongly attached to it, and was glad to write in his draft a clause guaranteeing "the free toleration of religious profession and worship without diminution or preference." But Jay's ancestral traditions of La Rochelle and the Huguenots moved him also to be most wary lest alien political influence should creep in under the guise of faith. He strove to secure the adoption of an amendment not, indeed, to abridge or interfere with freedom of faith and worship, but to withhold citizenship from and deny naturalization to all who would not specifically abjure the authority of any foreign ecclesiastic to absolve citizens from their allegiance. In this he did not wholly succeed, but he did secure provisions that liberty of conscience should not be so construed as to justify acts of licentiousness or practices inconsistent with the safety of the State; and that before being naturalized aliens should abjure all foreign allegiance "in matters ecclesiastical as well as civil." It was not that he opposed religious liberty, but that he wished to protect the State against ecclesiastical intrigue.

One other important amendment was urged by Jay and Morris, but unhappily failed. This was for the abolition and prohibition of human slavery, and to it the two great statesmen were most earnestly devoted. Its adoption would have been of the greatest possible



importance to the whole nation, and might well have caused the universal abolition of slavery at an early date. Had Jay been able to remain in the Convention to the end, he might have secured its acceptance. But at the critical moment he was called away by the death of his mother, which occurred on April 17, and in his absence Morris was unable to sway the Convention in favor of freedom; and the amendment, after having once been approved, was finally omitted.

By this time the Convention was growing weary of debate upon the Constitution. Jay's absence dispirited his friends, who lacked his commanding leadership. It also prompted his opponents to hasten matters before he should return. Accordingly, on Sunday, April 20, at the very moment when the absent leader was attending the funeral of his mother, at Fishkill, the Constitution was pushed to a final vote and was all but unanimously adopted. Two days later it was published and promulgated by being read aloud from an improvised platform, consisting of an up-ended cask, in front of the Kingston court house. It was never submitted to the people for their ratification, the Convention assuming that in electing members of the Convention for the purpose of preparing a Constitution, the people practically ratified in advance whatever instrument that body might adopt. It may be added that in this respect the example of New York was followed by nearly all the other States, Massachusetts alone submitting its Constitution to a popular vote.

On the whole, we must esteem the first Constitution of New York to have been, despite some errors, an

exceptionally wise and worthy instrument. It was pretty generally thus regarded in the other States as its contents became known. Jay himself wrote that it was approved "even in New England," where few New York productions had been received with favor.

## CHAPTER III

### THE FIRST GOVERNOR

**P**OLITICAL parties in the present sense of the term had not at the time of which we are writing yet come into organized existence. There was of course a strong division of the people between American patriots and British loyalists. The former, who were all with whom we need now concern ourselves, were vaguely subdivided more on social than political lines. There were aristocrats, or conservatives, and it was chiefly on these lines, in addition to those of personal and family influence, that the electorate was divided in the contest for the first Governor of the State of New York.

There were four candidates. One of them, doubtless the fittest of all, was John Jay. He was a candidate against his will, never acknowledging his candidacy but trying sincerely to rule himself out by throwing all his influence in behalf of another. Had he sought election he would probably have won. That he did not was, however, a fortunate circumstance, since he was thus left free to devote his invaluable services to the Nation instead of merely to a State.

Another was Philip Schuyler, a curious compound of aristocrat and democrat. In the Provincial Assembly of 1768 he had been the foremost champion of the people. When in 1775 that body showed itself defiant of the popular will, and refused to coöperate with the

Continental Congress, he took the lead in organizing the Provincial Congress to replace it. He was a man of military talent—it was through his strategy and Arnold's impetuous valor that Burgoyne was defeated and captured at Saratoga, though the weakling Gates claimed the credit of the victory,—and of still greater civic gifts. His intellect was masterful, his energy was untiring, his integrity was spotless, his devotion to the public welfare was unsurpassed. Yet he was characterized by a sort of semi-aristocratic, semi-military austerity, not to say arrogance, which held him aloof from the common people to whose interest he was in fact devoted, and denied him their affection while he fully commanded their respect and gratitude. He was for them but not of them.

A third candidate was John Morin Scott, another curious compound of aristocrat and democrat. He was a man of aristocratic Scottish ancestry, of great wealth, and of luxurious domestic life. His home was one of the most richly furnished in all the metropolitan region. By profession he was a lawyer, and from that calling he derived a large income. Yet he was essentially a radical agitator of the extremest type, and was inclined to make his appeal to the democracy against the aristocracy. He had served in the Continental Congress in 1775 and in the New York Provincial Congress of 1776, and was a brigadier-general in the battle of Long Island. He had been a member of Jay's committee which drafted the State Constitution.

George Clinton was the fourth candidate. He was a thorough democrat in spirit, though of aristocratic



antecedents and of autocratic disposition. He came of a family which had been exiled by Cromwell for its adherence to the Stuart cause, but had afterward been permitted to live in seclusion in the north of Ireland. Thence it migrated to the Hudson Valley, where, at Little Britain, Ulster county, George Clinton was born on July 26, 1739. He was almost as precocious as was his greater opponent, Hamilton. As a boy of fifteen he held command on an American privateer; at sixteen he was a lieutenant at the conquest of Fort Frontenac; at twenty-six he was Schuyler's chief rival for the leadership of the Provincial Congress. In 1776 he was a member of the Continental Congress and voted for the Declaration of Independence, but was deprived of the privilege of signing that document through being called away for military duty before the engrossed copy was ready for signature, serving as a brigadier-general. He had to the full the characteristic temperament of an Irishman: generous and sympathetic, yet pugnacious and domineering; a loyal friend and a bitter foe; a brave soldier and a consummate politician.

Such were the candidates for the first Governorship. There was little preliminary campaign for the election. People were too busy with the war for speech-making or parading. Scott made some effort, personal and epistolary, in his own behalf. Jay wrote a widely circulated letter urging the election of Schuyler as Governor and Clinton as Lieutenant-Governor. Clinton put himself forward and was pushed by his friends for the Governorship, and was thus a candidate for both offices.

The election was held in June, 1777. Jay's letter had the effect of securing the aristocratic and conservative vote almost solidly for Schuyler for Governor and Clinton for Lieutenant-Governor. The democratic and radical vote was chiefly divided between Clinton and Scott in the ratio of nearly two to one in favor of the former. A large vote was cast for Jay in spite of his unwillingness to receive it, and some ballots were cast for Philip Livingston and for Robert R. Livingston. Many days elapsed before the result was known, and then it was found that George Clinton had been elected to both offices; to the Governorship through the heavy vote of the southern counties in his favor and also, probably, through the diversion of some conservative votes from Schuyler to Jay, and to the Lieutenant-Governorship through the absence of any formidable competing candidate. He of course elected to accept the Governorship, and the Lieutenant-Governorship consequently remained vacant until the Legislature met and on September 1 chose Pierre Van Cortlandt for that office.

This result was not well received by Schuyler. The early reports of the polling had indicated his election, and indeed Jay had written him congratulating him upon his apparent success. When complete returns reversed this showing he could not conceal his disappointment and even his resentment. He attributed Clinton's victory to his exercise of the arts of a politician, and declared that his antecedents did not entitle him to such distinction; an opinion in which we can scarcely agree with him, seeing what Clinton's activities had been. Nevertheless, Schuyler was too large a man

to let personal pique affect his public policy. He ungrudgingly recognized Clinton's integrity and patriotism, his ability and courage, and invoked for him and his administration the undivided and cordial support of the State. Then he turned his attention to meeting the British invasion at the north, organizing against Burgoyne the campaign of which Gates was to claim the credit.

The result of the election was finally announced on July 9, and on July 30 came the formal inauguration of the Governor. The place was at the front of the court house at Kingston, which served as the first Capitol of the State. The stage was an up-turned cask, the same from which in the preceding April the Constitution of the State had been proclaimed. Standing upon that insecure and humble pedestal, clad in the uniform of a brigadier-general of militia, and holding his drawn sword in his upraised hand, George Clinton took oath of office as the first Governor of the State of New York. That same day the Council of Safety proclaimed him to be "Governor-General and Commander-in-Chief of all the Militia, and Admiral of the Navy of the State, to whom the good people of this State are to pay due obedience according to the laws and Constitution thereof."

Already on July 16 the Council of Safety had issued a summons convening the Legislature at Kingston on August 1. The disturbed condition of the State, however, due to British invasions at the north, west, and south, made it impracticable for the members to meet at that time. Most of them were either actively engaged

with the militia in the field or as actively looking for the protection of their families and property from the menaces of war. Clinton waited until August and then prorogued the meeting to August 20. Two days before that date it was evident that there could be no meeting of a quorum of either house, and a second prorogation was made to September 1. On this date a few members of each house were present, but not a quorum, wherefore the usual custom was practiced, of meeting daily and immediately adjourning until such time as a quorum could be secured. At last, on September 9, a quorum appeared in the Senate, and the next day one was secured in the Assembly.

It was on the afternoon of September 10, 1777, then, in the little court house at Kingston, that the Legislature of the State of New York began its work. Adopting the custom of the British Parliament, which later was adopted by the Congress of the United States, the two houses met in joint session to listen to an address from the Governor, after the fashion of the speech from the throne. Clinton referred to the British invasions and the consequent delay in organizing the government; to the success of Schuyler and Herkimer against the British at the west; to the victory at Bennington, Vermont, a region then regarded as part of New York; and to the strengthening of Gates's army at the north and of the defenses of the Hudson at the south. He recommended speedy revision of the militia laws to meet existing conditions; revision of the fiscal system to provide for a necessary revenue and sinking fund against the debt already incurred; and the enactment of



an election law. Finally he urged scrupulous observance of the distinctions between the executive, legislative, and judicial departments of the State government.

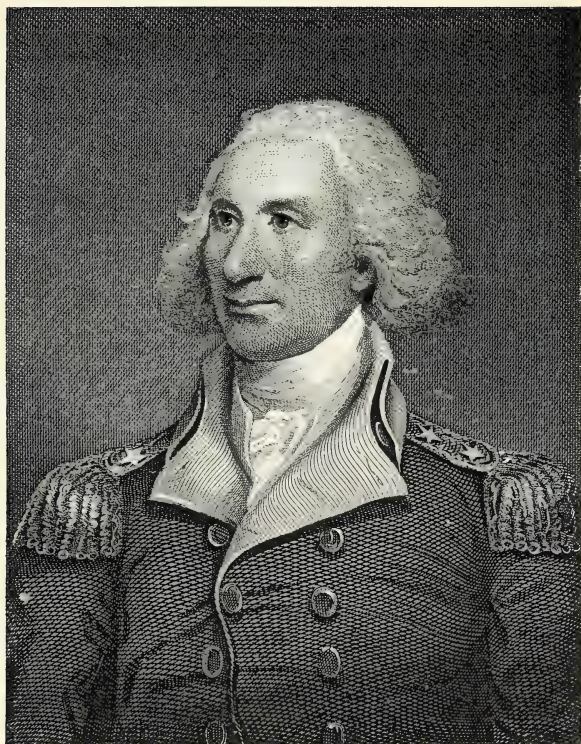
Three days later the Assembly, continuing to follow the British example, presented a Reply to the Address, congratulating the Governor upon his election, expressing approval of his reports and recommendations, promising promptly to take up the matters which he had presented to its attention, and concluding:

"The several precautions taken by the late Convention for securing to the subjects (*sic*) of this State the full enjoyment of political, civil, and religious liberty, do equal honor to their wisdom and their virtue. We thoroughly approve your Excellency's intention to retain and exercise all the powers with which you are invested, and we trust that you will exert yourself vigorously to execute the laws for the restoration of good order and the suppression and punishment of vice and immorality—while, as faithful guardians of the rights of our constituents, we are determined neither to encroach upon the privileges of others, nor suffer our own to be invaded, we shall heartily concur in all things for the advantage of the people over whom you have been chosen to preside."

To this the Governor formally returned his thanks and his expressions of confidence in the Assembly and its purposes. Several other communications were sent by the Governor to the Legislature, concerning the conduct of the war. On September 18 he informed the Senate that on September 16 the Assembly had appointed John Morin Scott, Senator from the South-

ern district, Jesse Woodhull, Senator from the Middle district, Abraham Yates, Senator from the Western district, and Alexander Webster, Senator from the Eastern district, to compose the Council of Appointment. On September 22 he met the Senate by appointment "at the house of Christopher Tappan," to receive its reply to his address, and to thank it therefor; these utterances being similar to those which had already passed between the Assembly and the Governor.

The two houses then settled down to constructive legislation, but before a single law of importance was enacted their deliberations were rudely interrupted. The British were forcing their way up the Hudson in a too much belated attempt to save Burgoyne; the same forces which some months before had compelled the flight from White Plains and Fishkill northward to Kingston. General Israel Putnam was in command of the defenses of the Hudson, but was unable to check the hostile advance, and soon the British passed around the Dunderberg and came upon Forts Montgomery and Clinton, the last defenses before Kingston would be reached. Governor Clinton himself was in command at Fort Montgomery, and his brother James at Fort Clinton. The garrisons of both scarcely equalled a quarter of the British strength, and on October 6 both fell into the hands of the British. Governor Clinton with a part of his force escaped and retired toward Kingston, knowing that the fall of that place was inevitable but hoping to delay the British advance until the archives of the government could be removed to a place of safety. This was done, a hiding place being



PHILIP SCHUYLER

Philip Schuyler; born in Albany, N. Y., November 22, 1733; served in the colonial army; resigned in 1757 and was sent to England to settle claims in 1758; delegate to continental congress, 1775-1777; state senator from western New York district, 1780-84, 1786-89 and 1792-97; again delegate to continental congress, 1788-81; United States senator, 1789-91; 1797-98; died in Albany, N. Y., November 18, 1804.







RICHARD MONTGOMERY

Richard Montgomery, delegate to 1st provincial convention and soldier; born in Dublin, Ireland, December 2, 1736; graduated from Trinity college, Dublin at the age of 18 and entered the British army as an ensign in the 17th infantry; shortly afterward was ordered to America to take part in the expedition against Louisburg; promoted to be a captain in 1762 and served in the expeditions against Martinique and Havana; returned to Europe in 1772, coming back to America in 1773 when he married a daughter of Robert Livingston; in April, 1775 was chosen to represent Dutchess county at the first provincial convention and in June of the same year was appointed one of the eight brigadier generals—and the only one not from New England—to lead the expedition against Quebec; he fell in the attack on Quebec December 31, 1775 and a monument was erected to him in St. Paul's churchyard, New York City where many years later his remains were transferred.



found among the hills of Ulster county, at Rochester.

The Legislature promptly ordered all possible provisions and livestock to be placed on vessels and sent northward to Albany, or to be removed to the interior. A Council of Safety was appointed, consisting of William Floyd, Evert Bancker, Egbert Benson, Daniel Dunscomb, Robert Harper, Jonathan Landon, Levi Pawling, John Morin Scott, Johannes Snyder, Peter P. Van Zandt, Alexander Webster, William B. Whiting, and Abraham Yates; any seven of whom were vested with full powers of government as long as the necessities of the State should require and until the orderly reassembling of the Legislature should be possible. This was on October 7, in the forenoon. The Assembly then took a recess until four in the afternoon, and the Senate until the next morning. But when four o'clock came so many members of the Assembly had joined the militia in the field that no quorum could be had, and the next morning the Senate, finding that no quorum of the Assembly could be had, and realizing the futility of its own meetings in such circumstances, adjourned until such time as the Governor should think it proper to reconvene the Legislature. That ended all sessions at Kingston for a long time.

The British reached Kingston on October 16 and easily swept aside the 150 militia under Levi Pawling and Johannes Snyder, who were all the American troops in the vicinity, and in a few hours more they had burned to the ground every building in the town save a single house. Governor Clinton himself lingered until the last, holding that the "captain must always be

the last to leave a sinking ship," and narrowly escaped capture. He made his way by night across the Hudson, and rejoined his family, who had been sent some days before to Pleasant Valley, northeast of Poughkeepsie. Thence he presently recrossed the river and made his way to Hurley, where he gathered such forces as he could. The Council of Safety, having escaped from Kingston, met on October 19 at Marbletown and took such action as was possible for the relief of the inhabitants who had been despoiled of their goods and homes by the British, and then repaired to Hurley, where it made its headquarters for some weeks. It was a striking coincidence that on the very day after the destruction of Kingston, Burgoyne surrendered his whole army at Saratoga.

Thereafter for some weeks the affairs of the State were in the hands of the Council of Safety, which led a somewhat roving existence. But on November 21 that body sent a committee to confer with the Governor concerning the practicability of "putting an end to the sessions of this Council, either by calling the Legislature of this State, or a convention thereof." Clinton was then settled at New Windsor, and could not or would not remove thence. That place was not large enough to accommodate the Legislature, and the nearest place to it that was large enough, and indeed the only such place near enough to New Windsor to suit Clinton's convenience, was Poughkeepsie, then a town of between 1,500 and 2,000 inhabitants. The Governor therefore requested the committee to ascertain if suitable accommodations could be obtained there, and, being assured



that they could, he issued on December 15 a proclamation convening the Legislature at Poughkeepsie on January 5, 1778. The Committee of Safety met there on December 22 and daily thereafter until January 7, when it abdicated its functions in favor of the Legislature, which at that time began meeting as a convention. This arrangement was necessary since there was not yet present a quorum of the Senate. The latter was secured on January 14, and on the following day the two houses resumed the meetings which had been interrupted at Kingston. The place of meeting was the Van Kleeck mansion, which had been used as a tavern.

The first new business laid before the Legislature by the Governor was "the proposed Articles of Confederation and perpetual Union between the United States of America," with a letter from the Continental Congress of November 17, 1777, recommending them to the Legislature of New York for consideration and approval. These Articles were promptly and favorably considered, and on February 6 were ratified, the act of ratification forming Chapter I of the Laws of the State of New York. The New York Delegates to the Continental Congress were by the same act instructed to sign the Articles. But this was done with a reservation to the effect that the ratification and signature should not become valid and effective until like action had been taken by all the other States. Although the New York Delegates, therefore, signed on July 9, and most of the others at about the same time, New York was tech-

nically not a member of the Confederation until March 1, 1781, when Maryland, the last of the Thirteen, signed the Articles.

The other major topics submitted to the Legislature by Clinton in his first address to that body were taken up and satisfactorily disposed of in due time. Chapter XII of the laws, on March 16, provided for the more complete organization, jurisdiction, and administration of various departments and offices of the State government. John Jay was made Chief-Justice of the Supreme Court of the State; Robert R. Livingston was made Chancellor; and Philip Livingston, James Duane, Francis Lewis, and Gouverneur Morris were made Delegates to the Continental Congress. Chapter XVI, on March 27, was an election law. It designated the last Tuesday of April as the general election day, on which the Governor, Lieutenant-Governor, Senators, and Assemblymen should be chosen. Votes for Governor and Lieutenant-Governor were to be cast by means of paper ballots, but those for members of both houses of the Legislature were to be given orally, with a voice audible to the inspectors of election. The official term of all these elective officers was to begin on the first Monday of July next following their election. This bill was vetoed by the Council of Revision, but was repassed over the veto.

Chapter XVII, on March 28, was intended to rehabilitate the finances of the State by levying a tax of three pence a pound on real estate, and one penny half-penny a pound on personal property, to be paid to County Treasurers and by them turned in to the State

treasury. This also was vetoed by the Council of Revision, and was repassed over the veto. A State Treasurer was not provided for until Chapter XXVI, on April 1. A general militia law formed Chapter XXXIII, on April 3. It is of curious interest to recall, also, that Chapter XXXIV, on April 3, regulated the wages of mechanics and laborers, the prices of all goods and commodities, and the charges of inn-keepers, within the State. This was done in pursuance of an agreement which had been reached by the representatives of all the States at New Haven in January, at a Convention called for that purpose at the request of the Continental Congress. But as a number of the States did not approve that agreement or put it into effect, Clinton on June 22, 1778, suggested to the Legislature the inadvisability of New York's acting independently, and the measure was then suspended and afterward repealed.

Most of the other acts of the Legislature at this session had reference to matters of detail concerning governmental organization or the prosecution of the war, and were enacted with little debate or difference of opinion. On June 30, 1778, the Legislature adjourned without day.

A proclamation was issued by the Governor on September 1 following, however, reconvening the Legislature at Poughkeepsie on October 1, 1778. Very few of the members were present on that day and a quorum could not be secured until October 13, at which time the Governor again made a formal address to the houses in joint session, which was followed with replies from the houses and the thanks of the Governor for

them. One of the chief topics discussed was the insurgency of Vermont, which at that time was claimed as the Eastern district of New York. In a message to the first session of the Legislature, on February 6, the Governor had referred at some length to that region and its "designing and deluded inhabitants who aim at independency," and the Legislature at his recommendation had adopted a measure confirming land grants and giving concessions and privileges to all actual settlers there excepting those who should "yield or acknowledge any allegiance or subjection to the pretended State of Vermont." In October, in its reply to the Governor's address, the Assembly referred strongly to the same subject, and significantly declared: "Little will avail our resistance to a foreign enemy and domination unless we can, by enforcing a due subordination to government, establish peace and good order among ourselves."

This session was brief, but was marked with the transaction of important business. A joint meeting elected Delegates to Congress, and the Assembly elected a Council of Appointment, the terms for which those officers had formerly been chosen having expired. The sum of twenty thousand pounds was placed at the Governor's disposal for the expenses of the militia when called into active service for the defense of the State, and other acts provided for the distribution of food and clothing to the army. The Governor transmitted to the Legislature on October 22 a resolution of Congress of ten days before, recommending, for the sake of "true religion and good morals, the only solid foundation of



liberty and happiness," that the various States "take the most effectual measures for the encouragement thereof, and for the suppressing of theatrical entertainments, horse racing, gaming, and such other diversions as are productive of idleness, dissipation, and a general depravity of principles and manners." It does not appear, however, that any effective action was taken upon it.

A noteworthy veto message came from the Council of Revision on November 5, directed against the Tax law which the Legislature had enacted. That measure provided for a surtax, levied according to the judgment of the assessors upon those persons who, taking advantage of the necessities of the country in time of war, had amassed extraordinary gains—in brief, who had been guilty of what in our own time has been known as "profiteering." The Council of Revision objected to this for a number of reasons: Because it violated the constitutional principle of equal rights; because to tax a faculty is to tolerate it, and a vice like profiteering ought not to be tolerated; because this method of punishing people for a vicious practice was unconstitutional; because the Legislature was not authorized by the Constitution to exercise or to delegate the exercise of any such discriminatory power in assessing taxes; and because, on various and numerous other grounds, the provision was contrary to the public good. The bill was not repassed over this veto.

The session closed on November 6 with an adjournment to January 12, 1779. A quorum was not obtained in the Senate until January 27, or in the Assembly

until January 28, on which latter date the session began. At the beginning of the session the Governor transmitted to the Legislature, simply for its information, copies of the treaties of amity and commerce, and of alliance eventual and defensive, between the United States and France. He also reported that he had suspended sentence of death, pending action of the Legislature, upon a woman who had been convicted of the murder of her illegitimate child. The Legislature thereupon passed an act granting the woman a full pardon, on the ground that her conviction had been procured in the absence of a material witness for the defense. This was the first pardon granted in the history of the State. On March 16 the Legislature adjourned to June 1, to meet then at a place to be designated by the Governor. He did not, however, call it together at that time, so that it did not meet again during the life of that Assembly. A new Assembly had been elected in April, to assume office at the first of July.

The third session of the Legislature was summoned by the Governor, in a proclamation issued on July 17, 1779, to meet at Kingstön on August 9, that place having been sufficiently rebuilt to afford suitable accommodations. There was delay in assembling, as usual, so that a quorum was not obtained in both houses until August 24. The Governor's address and the transactions of the Legislature had chiefly to do with the prosecution of the war and with State and national finances. John Jay having been appointed Minister to Spain, Philip Schuyler was chosen to succeed him in Congress, and Robert R. Livingston, the Chancellor of the State, was

chosen to be an additional Delegate without forfeiting his Chancellorship. A bill to prohibit theatrical performances and horse races was effectively vetoed. On October 25 the Legislature adjourned to meet on January 10 at such place as the Governor might designate.

The designation proved to be a forecast of the future arrangements of the State government. On December 1 the Governor issued a call for the Legislature to meet not at Kingston or at Poughkeepsie as before, but, for the first time, at Albany, and not on January 10 as appointed by the Legislature itself, but on January 4. A number of members were present promptly on the day set, but owing to a deep fall of snow and inclement weather a quorum did not arrive until January 27. The session was chiefly occupied with providing supplies for the armies and similar matters, and it adjourned to meet on June 1 at a place to be named by the Governor.

He named Kingston again, in a proclamation issued on April 22, and set the time as May 9 instead of June 1, largely because of the urgency of dealing with the system of finance which had been adopted by Congress. There was no quorum until May 25. The meeting lasted until July 2, when the Legislature adjourned without day, an election of a new Assembly having occurred in April preceding.

The Fourth Legislature was summoned by the Governor on August 4, 1780, to meet at Poughkeepsie on September 4 following, and with unprecedented promptness a quorum of both houses appeared on September 7. The hearing before Congress on the Vermont

controversy was about to begin, the Delegates were the managers in behalf of New York, and it was necessary therefore to elect five Delegates to succeed those whose terms were at the point of expiring; which election was held on September 12. A bill was passed providing for the appointment of a Council to assist in the administration of the State during the recess of the Legislature. This the Council of Revision vetoed on the grounds that such Council would exercise powers of legislation, which were constitutionally vested in the Senate and Assembly and could not be delegated by them to others; that the Council would interfere with the functions of the Governor, who was endowed by the Constitution with supreme executive power and authority; and because the proposal was repugnant to the spirit and letter of the Constitution, and would impair the efficiency of the government. The bill was not repassed.

The Legislature adjourned on October 10 until January 10, 1781; but the Governor on November 25 called it to meet on January 2, selecting Albany again as the place of meeting. A quorum did not appear until January 31, when a very brief message from the Governor dealt entirely with military affairs. On February 24 he reported to the Legislature, as of great importance, for prompt consideration, two acts of Congress, of February 3 and 4, recommending that the various States vest Congress with the power of levying duties on imports. Of this matter, which proved to be of vast importance and far-reaching political effect, we shall hear more hereafter. On March 19 he announced that the Articles of Confederation had at last been signed by



all thirteen States. "This important event," he said, "as it establishes our union and defeats the first hope of our enemy, cannot but afford the highest satisfaction; and I trust that this State will be as distinguished for its faithful adherence to this great national compact, so essential to the peace and happiness of America, as it has hitherto been for its exertions in the common cause." This also relates to something of which we shall presently hear more; in view of which Clinton's use of the word "national" is to be remarked as of special and significant interest.

On March 31 the Legislature adjourned to meet on June 6 at a place designated by the Governor. On May 8 he designated Poughkeepsie as the place of meeting, where a quorum did not appear until June 16. Meantime at the April election there had been elected a new Senate and a new Assembly. Governor Clinton had himself been reëlected in April, 1780, and Pierre Van Cortlandt had been elected Lieutenant-Governor, confirming him in the place to which he had been elected three years before by the Legislature.

## CHAPTER IV

### FROM WAR TO PEACE

THE Fifth Legislature was summoned by the Governor, in a proclamation of September 6, to meet at Poughkeepsie on October 1, 1781. A quorum was not obtained until October 24, on which day Governor Clinton made his opening address. The first duties of the Legislature were to elect (by the Assembly) a new Council of Appointment and by joint ballot Delegates to Congress. These duties being performed on October 25 and 26 respectively, the financial and other topics presented by the Governor were promptly taken up, and laws were enacted enabling the State Treasurer to exchange old Continental money for new; levying a State tax; requiring County Treasurers to make returns of taxes to the State; and raising the sum of 36,000 pounds by tax for settling public accounts. On October 29 the Governor had the joy of announcing to the Legislature the surrender of Cornwallis at Yorktown, which had occurred ten days before. A long letter from Robert Morris, the national Superintendent of Finance, to the Governor, concerning the requisitions which Congress was about to make, was also laid before the Legislature.

There was much discussion of the Vermont controversy, which on November 19 culminated in the adoption of a drastic series of resolutions, declaring that the Legislature was "greatly alarmed at the evident inten-

tion of Congress . . . to establish an arbitrary boundary whereby to exclude out of this State the greatest part of the territory . . . belonging most unquestionably to this State as part, parcel, and member thereof; and to erect such dismemberment, possessed by revolted subjects of this State, into an independent State, and as such to admit them into the Federal union of these United States." In consequence of this menace, the Legislature declared it to be its sense that Congress had no authority to meddle with the extent of jurisdiction of any State, except in controversies between two or more States, to admit into the Union any new State without consent of nine of the existing States, or above all, "to create a new State by dismembering one of the Thirteen United States without their universal consent." Therefore if Congress should make any attempt to carry its intention into effect, the Legislature of New York felt bound to declare such act an assumption of power contrary to the letter and spirit of the Articles of Confederation, and solemnly to protest against it.

Three days later resolutions were adopted regretfully informing Congress that there was very little hope of New York's being able to comply with any of the requisitions of Congress. Then, on November 23, the Legislature adjourned to meet at Poughkeepsie on May 15, 1782.

On January 20, however, the Governor issued a proclamation convening it on February 11, and when on February 23 a quorum was secured he explained in a message the urgent reasons for this course. These were

related to the salient topics of the preceding meeting. Congress was making requisition of aids in men and money, and there were important communications concerning them from the commander-in-chief and from the Superintendent of Finance. These Federal relations were so important and urgent as to overshadow all merely local issues. But the Vermont troubles could not be ignored, and the Governor therefore laid before the Legislature a mass of documents which proved, he said, "a treasonable and dangerous intercourse between the leaders of the revolt in the northeastern part of the State and the common enemy," adding that "these criminal transactions are not confined to individuals, but have been conducted under the countenance and sanction of that usurped government."

Among the recommendations from Congress which were reported to the Legislature was one for the taking of a census of the white inhabitants of the State, pursuant to the ninth Article of Confederation; and this was ordered by the Legislature on March 20. On April 11 another Congressional suggestion was acted upon in the incorporation of the Bank of North America and the prohibition of the establishment of any other bank within the State. On April 14 the Legislature adjourned, subject to the call of the Governor.

There was no further call for the services of that Legislature. A new Assembly was elected in April, and on June 11 the Governor issued a proclamation convening the Sixth Legislature at Poughkeepsie on July 3, 1782. A quorum was obtained on July 11, when the Governor delivered an opening address agreeably

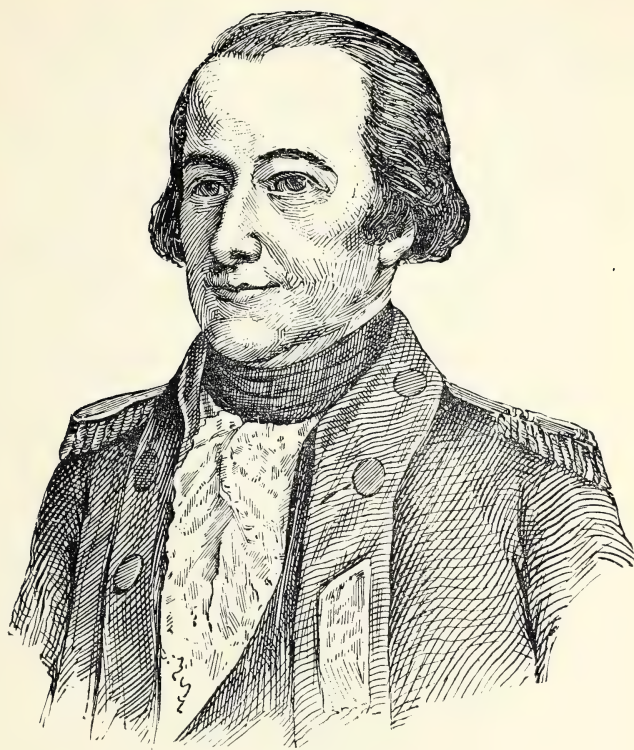


different in tone from those which had been largely monopolized by matters of war and wartime finance. "With great satisfaction" he announced the birth of a dauphin of France, and he dwelt at some length and with much earnestness upon the great desirability of fostering and promoting popular education. The great arrearages of taxes which had been reported suggested the need of some reform of the taxation laws; in response to which, in addition to the levying of new taxes, a stringent law for the collection of arrears was passed. No practical attention was paid, however, to the recommendations for public instruction. That matter was left for action two years later, after the Governor had again taken it up in his address in January, 1784. After a brief session the Legislature adjourned on July 25 to meet on January 7, 1783, at a place to be determined by the Governor.

Brief as was this session, however, it comprised one act which we must reckon among the most momentous and most far-reaching in its results of all that had been performed since the creation of the State. Indeed, it was one of the most important in the entire history of the State of New York, since it was nothing less than the first definite step toward drafting and adopting the Constitution of the United States and thus transforming the Confederation into a true Nation. In that incident the commanding figure of Alexander Hamilton first appeared as a factor in the politics of New York. He had only recently settled in New York City as a practicing lawyer, and held no public office, though later in that same year he was elected a Delegate to Congress.

He drafted, however, early in July, a most impressive series of resolutions, which he had his friends introduce into the Legislature, and which were adopted by the Senate on July 20, 1782, and by the Assembly a few days later—in each case by unanimous vote.

These resolutions, referring to various representations of Congress and of the Superintendent of Finance, expressed the opinion that the situation of the States was “in a peculiar manner critical” and afforded the strongest reason to fear that a continuation of the existing constitution, or Articles of Confederation, would result in “a subversion of public credit and consequences highly dangerous to the safety and independence of these States”; that the States might not thereafter be able to secure pecuniary aid from France; that the plan then just adopted by Congress for the administration of finances was wise and sound, but that the provisions made by the individual States for carrying on the war were hopelessly inadequate; that the British government had adopted a new policy “calculated to conciliate in Europe and to seduce in America” and therefore very dangerous to this country; that the existing system of these States exposed the common cause to a precarious issue; that the state of European affairs afforded reasonable grounds for confidence in American success if only a more effectual system of coöperation were adopted; that the radical source of most of the embarrassments was the lack of sufficient power in Congress, particularly in its inability to provide revenue for itself and thus to maintain public credit; that credit was essential, since the fullest revenue of the States

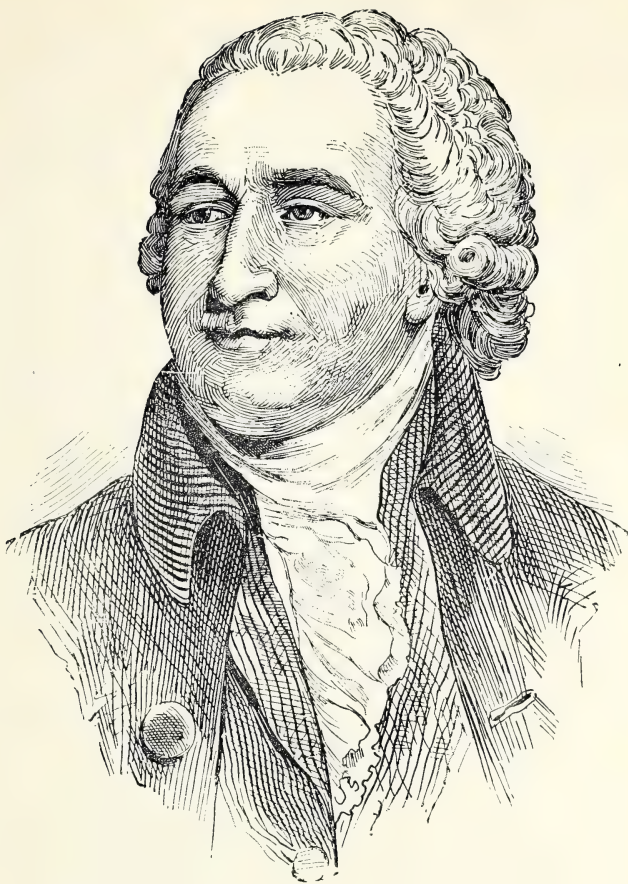


ALEXANDER MCDUGALL

Alexander McDougall; born on the island of Islay, Scotland, 1731; came to New York in 1755; engaged in printing and was imprisoned as the alleged author of revolutionary documents; served in the war of the revolution until its close; delegate to the continental congress, 1780 and 1784-85; member of the state senate, 1784-86; died in New York City, June 8, 1786.







JAMES DUANE

James Duane, first mayor of New York City; born in New York City, February 6, 1733; lawyer; member of continental congress, 1774-84; clerk of the court of chancery, 1762-1776; member of the revolutionary committee of 100, 1775; delegate to Annapolis convention, 1786; member of state senate, 1782-85, 1788-1790; first mayor of New York City, 1784; delegate to state convention to consider Federal constitution, 1788; United States district judge for district of New York, 1789-94; died in Duanesburg, Schenectady county, N. Y., February 1, 1797.



would be insufficient for a time to meet necessary expenditures; and that therefore "It appears to this Legislature that the foregoing important ends can never be attained by partial deliberations of the States separately; but that it is essential to the common welfare that there should be as soon as possible a conference of the whole on the subject; and that it would be advisable for this purpose to propose to Congress to recommend, and to each State to adopt, the measure of assembling a general convention of the States, specially authorized to revise and amend the Confederation, reserving a right to the respective Legislatures to ratify their determinations."

It would be impossible to exaggerate the epochal importance of that declaration. Its significance must certainly have been appreciated by the members of the Legislature, who without a dissenting voice approved it; and also by Governor Clinton himself, who, by order of the Legislature, transmitted the resolutions to Congress and also to the Governor of each of the other States. It was a pronouncement of which much was thereafter to be heard in the public affairs of both the State and the Nation, and it indubitably and indelibly marked the Empire State as the place of conception of the Constitution of the United States. After its adoption it was fitting that the Legislature should adjourn. Any further transactions at that session would have been an anti-climax.

Kingston was selected by the Governor as the next place of meeting, on January 7, and was thus announced in his proclamation of November 12. It took twenty

days to secure a quorum, and then, on January 27, 1783, the Governor sent in a message calling first and most urgent attention to the financial requisitions of Congress. Taxation, the payment of troops, and troubles in Vermont were other salient topics. The Governor referred with much bitterness to "outrages committed on the peaceable subjects of this State by persons acting under the authority of the usurped government attempted to be established in the northeastern part of this State." The Legislature declared it to be impracticable to meet all the financial requisitions of the Federal government, especially by exchanging specie for drafts, but it took some action looking to payment of troops.

Most important of all was the Governor's transmission to the Legislature, on March 8, of a letter from Governor Hancock of Massachusetts, conveying a resolution of the Massachusetts Legislature inviting the appointment of Delegates from the States to a Convention at Hartford, Connecticut, to be held on the last Wednesday in April, "to confer on the necessity of adopting such a general and uniform system of taxation, by impost and excise, as may be thought advantageous to the several States mentioned in the resolution." He also transmitted a letter from Alexander Hamilton discussing Federal relations and the powers of Congress. It was decided to participate in the Convention at Hartford, and Ezra L'Hommedieu, Ephraim Paine, and John Lansing were appointed Delegates to it.

The Governor transmitted on March 24 a copy of the agreement upon provisional terms of peace between the



United States and Great Britain which had been arrived at on November 30, 1782, and on March 28 added further dispatches announcing "the conclusion of the preliminaries of a general peace." On that day the Legislature adjourned subject to the Governor's call.

There was, however, no further need of the services of that Legislature. In April there were held the triennial election for Governor and simultaneously the annual election for members of Assembly, the result of the former being the practically unopposed return of Governor Clinton for his third term. Meantime great events were occurring. The war was giving place to peace. On September 3, 1783, the definitive treaty of peace with Great Britain was signed, and on November 25 following the British forces evacuated New York City, thus redeeming the State from alien occupancy save for some military posts on the western frontier. On December 9 the Governor summoned the new Legislature, the Seventh, to meet in New York City on January 6, 1784. Despite the eagerness which members might be supposed to have had thus to reënter the place which had so long been held by the enemy, a quorum was not obtained until January 21.

The Governor's opening address was much longer than usual. It began, naturally enough, with expressions of exultation and congratulation upon the return of peace and the complete establishment of American independence. Then it dwelt upon the imperative need of maintaining the public credit, of paying the soldiers, of restoring the commerce of New York, of providing a sinking fund, of promoting agriculture, and

of providing for public instruction. Attention was called also to the plans of Great Britain for monopolizing trade with the West Indies, which would operate greatly to the disadvantage of New York, and to the need of providing suitable compensation for public officials, of revising the militia laws, and of settlement of public accounts. Upon most of these matters action was taken by the Legislature, in the matter of public education the University of the State of New York being organized. A number of acts, some of this session and some of the preceding session, directed toward the penalization of British sympathizers and loyalists, were vetoed by the Council of Revision and were not repassed, of which we shall hear more presently. On May 12 the Legislature adjourned subject to the call of the Governor.

That call was issued on August 20, and it summoned a meeting at New York on October 4. A quorum was secured on October 18. The first topic in the Governor's message was the boundary controversy with Massachusetts, in response to his presentation of which the Legislature provided for a commission to represent New York in an attempted settlement, its members being James Duane, John Jay, Robert R. Livingston, Egbert Benson, and Walter Livingston. Later Simeon DeWitt was also appointed a Commissioner; and still later Congress was authorized to appoint Commissioners to determine and mark the true boundary line.

Other topics presented by the Governor for consideration and action were the need of paying the arrears of interest on the public debt, the evils of absentee land-

lordship, the need of taxation reform, of a better budget system and of codification of the laws, and the desirability of amendment of the act establishing the State University. Some of these were acted upon, and others were postponed; and on November 29 the Legislature adjourned until January 18, 1785.

A quorum did not appear until January 27, at which time the Governor brought to attention another boundary controversy, with the State of Pennsylvania; and on March 7 an act was passed providing for the ascertainment and marking of that line. This session was notable for the number and importance of the veto messages which came from the Council of Revision. One, on March 9, was directed against a bill "incorporating the several tradesmen and mechanics of the city and county of New York." In a long and elaborate document the Council argued that the proposed organization was superfluous and unnecessary for charitable purposes; that its dues and the time spent at meetings would operate as taxes upon its members, which would induce them to resort to means for keeping up the price of labor or else would cause them to find themselves underwrought by others; that such incorporation would give them special privileges, destructive of the principle of equal liberty; that the by-laws of the corporation were made in a measure dependent upon the municipal corporation of New York, wherefore either the mechanics would in time control the city government or that government would control the mechanics, either of which results would be pernicious; that a precedent would be set whereby other groups of men would be entitled to

like incorporation until the State would become not a community of free citizens but "a community of corporations composing an aristocracy destructive to the Constitution and independency of the State"; that the act purposed to incorporate not mechanics and tradesmen generally, but only forty-three persons, who could control the body as a close corporation dependent absolutely upon their will; that these forty-three persons would have improper power over the other mechanics and tradesmen; that they would have powers which might be used for the injury of the community; that the interests of the State required that industrious immigrants should not be confronted with such hostile influences as this corporation might exert; that the corporation was empowered to hold property to an unlimited amount with no provision to prevent the improper use of it or make the corporation accountable for it; and that, finally, "experience having pointed out no inconvenience in leaving the mechanics on the same footing with other members of the community, the bill holds forth no object sufficiently important to induce the change of a system under which they have happily prospered for a series of years in favor of one that presents many apparent inconveniences, and which, in its operation, may be more extensively mischievous than human prudence can at present foresee." The bill was not passed over the tremendous veto; though at a later date the Society of Tradesmen and Mechanics came into prosperous and beneficent existence. The veto is now to be recalled as a striking reminder of the



change in attitude toward such organizations which occurred in this State within the course of a few generations.

Another veto, on March 23, defeated a bill for the gradual abolition of slavery, because that measure disfranchised the freedmen and indeed all negroes and mulattoes in the State, and it was wisely deemed contrary to the principles of the Declaration of Independence and to the public welfare to create and maintain a considerable class of inhabitants who were not and could not become citizens.

Another veto, on April 6, highly interesting to recall at this time, rejected a bill "to incorporate the German Society for encouraging immigration from Germany," because "it will be productive of the most fatal evils to the State to introduce into it a great number of foreigners, differing from the old citizens in language and manners, ignorant of our Constitution, and totally unacquainted with the principles of civil liberty, under such circumstances as will naturally tend to keep them a distinct people and prevent their blending with the general mass of citizens, with one name and common interest."

The Legislature adjourned on April 27, subject to the call of the Governor. Meantime at the regular April election a new Senate—the third—and a new Assembly—the ninth—were chosen. On November 16 the Governor convoked the new Legislature to meet at New York on January 6, 1786. It was ten days after the latter date when a quorum was secured and the Governor's address was delivered. He suggested to the

Legislature that instead of always awaiting his call, it should itself provide by statute for a fixed time of meeting once a year, as it was obviously its right to do. The proposal was acted upon, and on March 13, 1786, chapter 14 of the Session laws required the Legislature to meet annually on the first Tuesday of January, unless the Governor for some special reason should convoke it at an earlier date. The Legislature might on adjournment fix its place of next meeting, but if it did not do so it should meet where it had last met. The Governor's address was largely devoted to financial matters and to the desirability of promoting agriculture, industry, and commerce.

In response to an invitation from the State of Virginia, the Legislature appointed Robert R. Livingston, James Duane, Egbert Benson, Alexander Hamilton, Leonard Gansevoort, and Robert C. Livingston, or any three of them, Commissioners to meet similar Commissioners from other States, "to take into consideration the trade and commerce of the United States—to consider how far a uniform system in their commercial intercourse and regulations may be necessary to their common interest and permanent harmony; and to report to the several States such an act relative to this great object as when unanimously ratified by them will enable the United States in Congress assembled to provide for the same."

The Legislature voted on April 29 to hold its next meeting in New York, and on May 5 it adjourned—curiously enough, to meet on the first Monday in January, although it had enacted a statute prescribing the

first Tuesday as the fixed time for meeting. At the April election a new Assembly was chosen, and Governor Clinton and Lieutenant-Governor Van Cortlandt were reëlected for their fourth terms practically without opposition. There was, indeed, some inclination on the part of his friends to put John Jay forward for the Governorship, but he, absorbed in national interests, gave no encouragement to the movement. Yet the incident was significant of the beginning of party divisions which would presently develop into political controversies, and even conflicts and animosities, of the most intense character.

The Tenth session of the Legislature was, according to statute, to meet at New York on the first Tuesday of January, 1787. A quorum was not secured, however, until January 13, at which time the Governor delivered his opening address. He reported the settlement of the Massachusetts and Pennsylvania boundary disputes, a settlement which was ratified by the Legislature a year later. He also reported several Indian treaties, which also were acted upon in the following year. His recommendation of the creation of a new county, from a part of Washington county, was adopted, and the county appropriately named Clinton came into existence in 1788. He announced the receipt of a letter from the President of Congress concerning the definitive treaty of peace with Great Britain, and also a resolution of Congress, to the effect that no State could of right interpret, explain, or construe a treaty, or restrain, limit, impede, retard, or counteract its operation and execu-

tion; wherefore all State laws repugnant to this treaty should be repealed. The Legislature made such a repeal in February, 1788.

The Legislature adjourned on April 21 to meet at Poughkeepsie on the first Tuesday of January, 1788, unless earlier summoned by the Governor. It was not thus summoned, but a quorum was not obtained at Poughkeepsie until January 11, 1788, when the Governor made his opening address to the Eleventh Legislature. The chief purport of that address was to lay before the Legislature, without recommendation of any kind, the report of the Constitutional convention of the States, which had been held at Philadelphia. Clinton did not so much as say that he laid that report before the Legislature for such action as it might deem fitting, but merely for its information. What was done in that matter we shall see in another chapter. The Legislature adjourned on March 22, to meet at Albany on the first Tuesday in January, 1789, unless earlier called together by the Governor.



## CHAPTER V

### THE RISE OF PARTIES

IT will be expedient at this point in our narrative to recur to some incidents already passed by, in order to appreciate accurately the causes and circumstances of the rise of political parties in the State of New York. We must, of course, regard such a development as inevitable in every considerable commonwealth, but the causes of it are as varied as the States in which it occurs. We have seen that party divisions, if they can be said to have existed at all, were very vague at the organization of the State, and were made on social and personal lines rather than on political issues and principles. The only truly political division was between patriots and loyalists, between the friends of American independence and the sympathizers with British rule, between whigs and tories. This division was of course intensely marked. It was not merely political; it was militant. Between the two parties there was not merely rivalry but enmity and hostility. This was the case to a certain extent before the organization of New York as an independent State. It became the more marked after that event, because that organization was effected, naturally, by the patriot party alone, which thus came into exclusive governmental control of the State, and which not unnaturally or unreasonably thereupon began to exercise governmental discrimination against the other party.

In this campaign against the British loyalists the leader was Governor Clinton himself. There was in all the United States no more devoted patriot than he, albeit, as we shall see, his devotion was more for the State than for the Nation. There was surely no one who more passionately and inexorably hated Great Britain and all British sympathizers. He has been quoted as having declared that he would "rather roast in hell to all eternity than be dependent upon Great Britain or show mercy to a damned tory." Nor was that mere rodomontade. In his official conduct as Governor he made practically manifest the spirit which those words expressed.

Among the earliest acts of the Legislature under his direction were laws requiring an oath of allegiance to the State not only as a condition of citizenship, but also as a condition of residence within the boundaries of the State, and confiscating and ordering the sale of the property of all who had "adhered to the enemy." This latter meant in effect the confiscation without recompense of the estates of all who would not take the oath of allegiance. Some of the most extreme of these measures were, happily, vetoed by the Council of Revision, but under those which remained, and in too many cases under an "unwritten law," the harshest of treatment was inflicted upon the British loyalists. Thousands of them, whose only offense was their unwillingness to renounce their British allegiance, were summarily driven out of the State, were sent within the British lines at New York City, or were permitted to remain within a certain pale under heavy bonds not to

go beyond the prescribed limits. Heavy fines were levied and long terms of imprisonment were imposed. There was even resort to physical violence, and men were flogged and coated with tar and feathers, not alone by lawless mobs but in some cases with the acquiescence, if not at the initiative, of the Governor.

The natural result of this strenuous policy was to develop party divisions among the patriots themselves. On the one hand were those who were remorseless in their prosecution and persecution of tories; who had, it must be confessed, much provocation for their course in the acts which many tories committed betraying the patriot cause, as well as in the outrages which tories and their Indian allies had committed. On the other hand were those who favored a more moderate and humane, if not a lenient, policy, on the quite true grounds that only a certain proportion of the tories were guilty of anything more than passive disapproval of New York's independence, and that it would be a grave material injury to the State to expel so large a part of its population. During the war and for some years after the cessation of hostilities the former party was dominant, and the culmination of its ruthless policy did not occur until 1783. At that time, upon the evacuation of New York City by the British garrison, there was a wholesale exodus of the loyalists who had found refuge in or had been driven into that city, as well as of many others from other parts of the State. There is no authentic record of their numbers, but estimates range from fifty thousand to a hundred thousand, the latter figures being reported by Sir Guy Carleton. Even the

smaller number would denote a serious depletion of the population of the still sparsely settled State. The exiles went chiefly to New Brunswick and Nova Scotia, where at St. John the anniversary of their landing was long commemorated, and where they and their descendants cherished for many years a resentment and antagonism toward the United States, and especially toward New York, amounting to positive hatred.

The first important division of official and political sentiment on this subject was manifested on March 25, 1778. At that time the Council of Revision vetoed the bill providing for an electoral system, to which we have already referred. Among the reasons for this action was the fact that the bill disqualified and incapacitated to hold office, or even to vote, all persons who had since July 9, 1776, acknowledged the sovereignty of Great Britain, or denied the authority of the government of the State of New York or the independence of that State, or the authority of any of its preceding Congresses, conventions, or committees, or who should thereafter make any such denial. This, the Council held, was *ex post facto* legislation, it was arbitrary and unjust, it destroyed all benefit of repentance and possibility of reconciliation on the part of the former tories who might have become good patriots, because the disqualifications were not limited to take place only on judicial conviction of the offenders, and because the disqualifications savored too much of resentment and revenge to be consistent with the dignity or good of a free people. The Legislature, however, repassed the bill over the veto, and it became law; and a few days



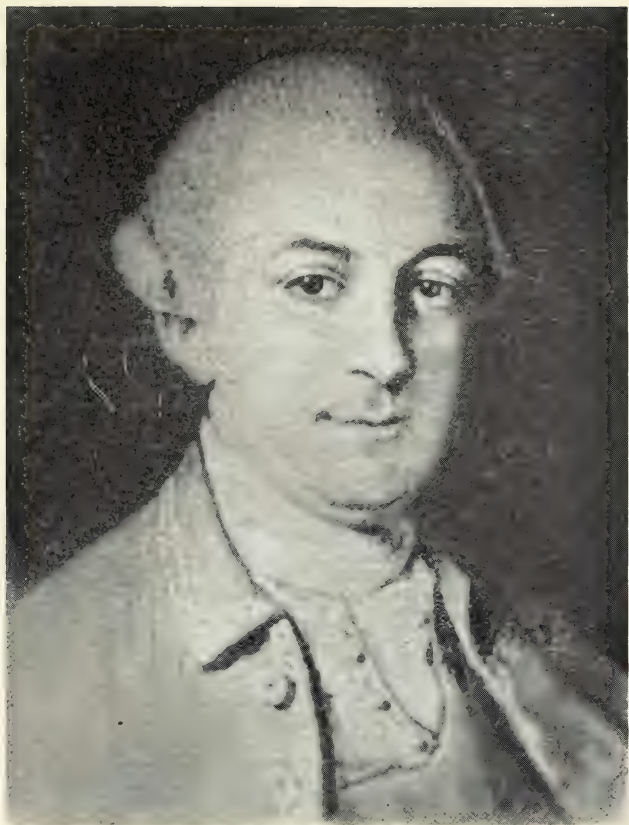
later it also passed the other measure, already mentioned, giving the Governor power to expel from the State persons and families regarded as disaffected and dangerous, a characterization which was of course readily applicable to all who were unwilling to take the oath of allegiance to the State of New York.

A similar issue was raised a year later when, on March 14, 1779, the Council of Revision vetoed a bill "for forfeitures and confiscations." The Council objected to one clause of this measure because it confiscated on account of alleged treason estates of persons who were dead at the time of its enactment—the estates thus confiscated being such as they had possessed on July 9, 1776, but which had since been inherited by other persons who might be perfectly good and loyal citizens. It objected to another clause because it forfeited the real property belonging on July 9, 1776, to inhabitants or subjects of Great Britain, a proceeding repugnant to justice, inviting reprisals, and capable of much abuse. This veto was effective, the Legislature not repassing the bill.

This division of sentiment and policy over the question of dealing with tories was gradually transformed into a much more marked division over a much more serious question, the first great and fundamental issue which arose in the politics of New York, and an issue which, chiefly originating in New York, became foremost for many years in the politics of the whole United States. This was the question of the relation of New York to the other States and to the Confederation; in its wider application, the question of State Rights or

National Sovereignty. There was perhaps a hint at it in the refusal of New York to make its ratification of the Articles of Confederation valid until all other States had signed them. It was far more strongly marked in the disapproval which Clinton manifested toward the act by which in 1781 the Legislature complied with the request of Congress in providing that import duties at the port of New York and in the entire customs district should be collected under the supervision of Congress and turned over to Congress for the treasury of the Confederation. To the Governor's mind, those revenues belonged to the State of New York and to nobody else, and the fact that New York was the port of entry for a considerable part of the other States did not alter that circumstance. His doctrine, in spite of his reference to the Articles of Confederation as a "national compact" forming a "union" of the States, was that the relationship among the States was that of a defensive alliance of sovereign powers. New York was bound to aid the other States against the British, but she was not called upon to give them pecuniary support.

Congress in April, 1783, adopted resolutions recommending it to the States as "indispensably necessary to the public credit and to the punctual and honorable discharge of public debts" that they should by State legislation give to Congress the power to levy certain duties on imports, such revenue to be applied exclusively to payment of principal or interest of public debts contracted for the prosecution of the war, and such imposts to continue for not more than twenty-five

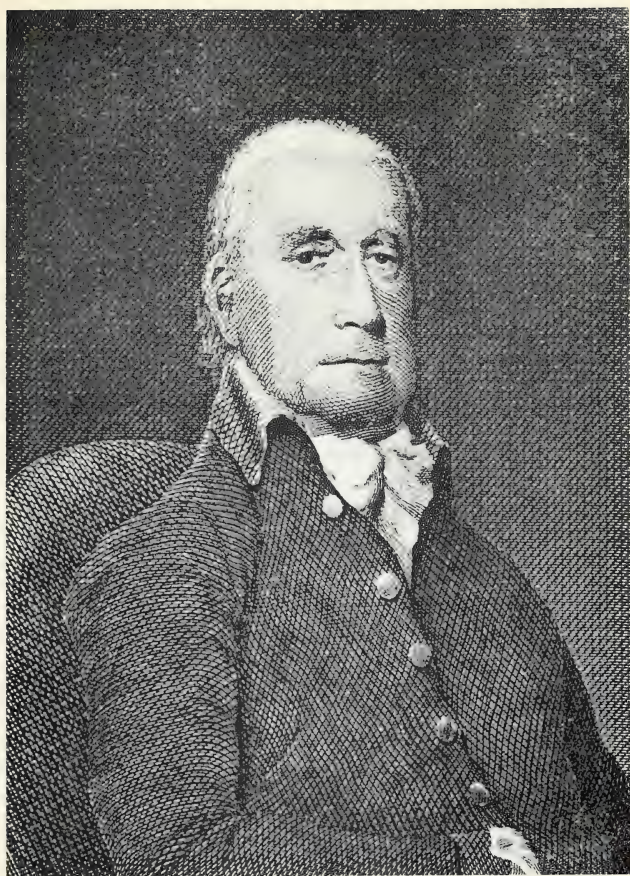


WILLIAM DUER

William Duer; born in Devonshire, England, March 18, 1747; attended Eton college; served in Anglo-Indian army; emigrated to the Province of New York, 1768; located in Washington county, where he was judge, colonel of militia, member of the committee of safety, and leader in the ante-revolutionary movements; delegate to the continental congress, 1777-78; removed to New York City, 1783; assisted Alexander Hamilton in organizing the treasury department; died in New York City, May 7, 1799.







FRANCIS LEWIS

Francis Lewis, signer of Declaration of Independence; born in Llandaff, Wales, March, 1713; came to America, 1735 and established mercantile houses in New York and Philadelphia; secured contract to clothe the british army in America, 1753; participated in French and Indian wars as an aid to Gen. Mercer; captured in Oswego, N. Y. by forces under Montcalm; taken prisoner to France and exchanged; on his return the colonial government gave him 5,000 acres of land in recognition of his services; delegate to the stamp act congress in New York City, 1765; delegate to continental congress, 1775-79; signer of the Declaration of Independence; died, New York City, December 30, 1802.



years. The duties were to be collected by State agents, amenable to and removable by Congress, and if a State failed for one month to appoint collectors they were to be appointed by Congress. It was also recommended that the Articles of Confederation be amended so as to base the apportionment of war expenses upon the States according to population rather than upon property, which change was made.

New York's reply to the first of these recommendations was to enact a law granting the specified imposts to Congress, but retaining for the State the entire power and supervision of collection, though Congress was empowered to prosecute collectors for neglect of duty in the State courts. This was unsatisfactory to Congress, and in August, 1786, it recommended to Governor Clinton that he immediately call a special session of the Legislature for the purpose of amending the law in conformity with the original recommendations of Congress. This Clinton declined to do, on the ground that he had power to call a special session only on an extraordinary occasion, and this could not be so regarded, seeing that the subject had been before the Legislature at its last session and had then been acted upon. Congress retorted by reëmphazizing the need of a uniform system of impost revenue, by pointing out that New York was the only State that had not adopted the plan proposed by Congress and that its failure to do so was having most embarrassing consequences, and by repeating the earnest recommendation for immediate action at a special session of the Legislature. Clinton persisted in his refusal to call such a session, but in his

address to the Legislature at the opening of the regular session on January 13, 1787, he referred to the matter in a non-committal way as something deserving of attention. The result was the enactment in April of a new Customs law, still maintaining the principle that the impost was to be collected by the State and granted by it to Congress, instead of being collected by Congress as of its own right. This was of course not satisfactory to Congress, but Clinton was resolute and the Legislature was loyal to him, and the matter accordingly remained in *statu quo* until the adoption of the Constitution of the United States. The controversy accentuated, however, the party differences which were being developed in New York, there being an increasing number of those who disagreed with Clinton's policy and who inclined toward the national point of view.

Mention has already been made of the entry of Alexander Hamilton into the political activities of New York and of the nation. He had been too young to hold office or to vote at the time of the organization of the State,—he did not attain his majority until 1778,—though he was old enough to render invaluable services and to attain distinction in the Revolutionary army. He was, we must remember, only twenty-four years old when as a general in command of an army corps he led the final attack upon Yorktown which compelled Cornwallis to surrender three days later. But despite his youth Hamilton had long been interested in State and national politics. At the age of nineteen he had profoundly considered the question of the collection of Federal revenues by Federal agents, and had become



convinced that such was the only sound procedure. He had, of course, no part in the act of 1781, already mentioned, providing for collection of import duties under Congressional supervision, though it was in accord with his ideas, but two years later, when at the age of twenty-six he was a New York Delegate in Congress, he earnestly advocated that principle, disapproved the action of New York in taking for the State full authority over collections, and was influential in urging an amendment which would give supervisory power to Congress.

In this Hamilton was directly in opposition to Clinton. That opposition appeared also in his legal activities in New York City. Establishing himself there in 1782, he quickly acquired an important practice, largely as the advocate of tolerance in the treatment of British subjects and loyalists and as the defender of their legal rights. In this he was of course moved by no sympathy with toryism or lack of patriotism, but by such just and enlightened motives as those which caused the Council of Revision to veto some of the disfranchising and confiscatory acts of the Legislature. It is of curious interest to recall, too, that he, who has commonly been regarded as inclining toward aristocracy or oligarchy rather than democracy, based his argument against these extreme measures on the ground of democracy. "If the Legislature can disfranchise at pleasure," he said, "it may soon confine all the votes to a small number of partisans, and establish an aristocracy or an oligarchy. If it may banish at discretion, no man can be safe." Therefore he depre-

cated the creation, through indulgence in momentary passion, of precedents and principles which might later prove fatal to free government.

Despite these radical differences, Clinton and Hamilton for some time seemed to be in substantial accord. Indeed, they coöperated on the very matter of the powers of the Federal government on which they ultimately came to loggerheads and fought the first great battle in New York politics. As early as 1780 Clinton had complained to the Legislature of the lack of power of the Federal government. In his opening address to the Fourth session, on September 7 of that year, he said:

“It is evident that our embarrassments in the prosecution of the war are chiefly to be attributed to a defect in power in those who ought to exercise a supreme direction, for while Congress can only recommend and the different States deliberate upon the propriety of the recommendation, we cannot expect a union of force or counsel. From this conviction I take the liberty of submitting to you whether further means ought not to be devised for accelerating the proposed confederation, and thereby vesting Congress with such authority as that in all matters which relate to the war their requisitions may be peremptory. It is with pleasure I find this to have been the sentiment of a convention of committees from three States lately held at Boston.”

As a result of the Legislature's consideration of the matter thus presented to it by Clinton, Philip Schuyler, John Sloss Hobart, and Egbert Benson were appointed Commissioners to represent New York at a Convention to be held at Hartford, Connecticut, in November, 1780,

with authority to propose and to recommend "all such measures as shall appear calculated to give a vigor to the governing powers equal to the present crisis." They accordingly secured the adoption of a recommendation empowering Congress to levy taxes upon the States in proportion to their population, which was approved by the New York Legislature on March 29, 1781. In this Clinton cordially acquiesced, as he did also in the unanimous adoption by the Legislature in 1782 of the supremely important resolution drafted by Hamilton, which we have already quoted, calling for an increase of the powers of Congress and suggesting the holding of a general Convention of the States for the purpose of revising and amending the Constitution. Reference has already been made to Clinton's mention of the Articles of Confederation as a "national" compact. It may be added that in transmitting to the Legislature in 1784 the memorable appeal of Washington for a stronger Federal government, Clinton said, in his opening address on January 21:

"Viewing the blessings we now enjoy as effects flowing from our union, you cannot but be attentive to every measure which has a tendency to cement it, and to give that energy to our national councils which may be necessary to the general welfare."

The earlier of these utterances in favor of a stronger Federal authority may be interpreted as referring solely to the exigencies of the war, as indeed some of them obviously did. But the last quoted certainly had reference to permanent arrangements in time of peace. It would, however, be quite unwarranted to charge

Clinton with bad faith or inconsistency in taking the attitude and making the utterances thus described, and then a little later vigorously opposing the new Constitution. There was nothing in his record committing himself to anything like the surrender of State rights to national sovereignty which that instrument involved. It does, however, seem plausible and not unjust to suppose that having been elected Governor of New York four times with practically no opposition, and having a keen appreciation of the paramount importance of New York among the States, he began involuntarily to feel a sort of autocratic proprietorship in the Empire State, and reckoned it preferable for it to be by far the strongest, richest, and greatest among a group of independent commonwealths, reserving for itself all its resources and revenues in order to maintain that status, than to be merely the richest part of a unified nation, giving of its wealth and strength to the other parts thereof.

Whatever his motive, he soon parted political company with Hamilton. A breach in their relations occurred in 1786. In that year Congress summoned a Convention of the States at Annapolis to consider ways and means for the regulation of commerce, and the Delegates from New York were Egbert Benson and Alexander Hamilton. The calling of that Convention was due in some measure to the action which the New York Legislature had taken at Hamilton's suggestion and with Clinton's concurrence, and the most important act of the Convention was the adoption of a set of resolutions proposed by Hamilton. These resolutions



were identical with those which he had got the New York Legislature to adopt unanimously four years before, declaring the government of the Confederation inefficient and calling for a Convention to revise and amend the Constitution. These were, as we have said, adopted by the Annapolis Convention, and were the sure precursors of the Constitution of the United States. But when they were referred back to the New York Legislature for ratification, that body, under Clinton's influence, rejected them. Obviously, there had been a change between 1782 and 1786.

The movement for radical revision of the Articles of Confederation was not, however, to be stayed. Indeed, Clinton and all others were in favor of it, the difference of opinion being as to the extent to which the changes should go. The Legislature refused to approve Hamilton's resolutions in 1786 because Clinton—quite correctly—conceived that Hamilton was aiming at an entirely new Constitution which would subordinate the States to the Nation. But when the next year a resolution was introduced into the Legislature instructing the New York Delegates in Congress to vote for a Convention, it passed with Clinton's approval, and the Governor manifested his broadness of mind by assenting to the election of Hamilton as one of New York's three Delegates to that Convention. Nevertheless, he saw to it that the other two were Robert Yates and John Lansing, Jr., two of the strongest supporters of State rights and strongest opponents of anything tending to sacrifice them to national sovereignty. Also, the Delegates were elected and commissioned "for the sole pur-

pose of revising the Articles of Confederation." Apparently no chance was left for any such work as that which the indomitable Hamilton did in fact achieve.

We need not here enter into the details of the Constitutional convention, which belong to the history of the nation rather than to that of the State of New York. Robert Yates was opposed to a national Union which should have a government of its own superior to those of the States, but he proposed no definite plan of improvement upon the existing Confederation. John Lansing very explicitly favored a plan proposed by the New Jersey Delegates, which merely amended the Articles of Confederation and left supreme authority in a Congress in which the States all had equal representation. Hamilton, though at first doubting whether it had sufficient strength, finally supported Madison's "Virginia plan," looking to the abandonment of the Articles of Confederation and the making of a new Constitution under which there would be a national government superior to and separate from the governments of the States. As soon as it was evident that a majority of the Convention would support that plan, and that it would be adopted, Yates and Lansing withdrew from the Convention and refused afterward to sign the completed Constitution. The ground which they took was that to do otherwise would be to violate their instructions from the Legislature, which were, as already noted, to do nothing but revise the Articles of Confederation. In that they were technically right, and they were heartily supported and approved by Governor Clinton. The effect of their withdrawal was

to leave New York without a vote in the Convention, since the vote of a State could be cast only by a majority of its Delegates, and Hamilton, standing alone, was a minority of them. Hamilton was permitted by the Convention, however, to sign the Constitution, which morally he was more entitled to do than any other man in the world.

On his return to New York, Hamilton found himself bitterly disapproved and discredited, not alone by Clinton and other political leaders, but probably by a majority of the people. The Governor rebuked him to his face for doing something which the State had not authorized him to do, and his friend Richard Morris, the Chief-Justice of the Supreme Court, said sadly, "You will find yourself in a hornets' nest." Nor was that foreboding exaggerated. The draft of the Constitution was sent by Congress on September 28, 1787, to the Legislatures of the various States, by nine of which it would have to be ratified before it became valid. In New York it was received with both vocal and manual violence. People denounced it as a "triple-headed monster." Friends quarreled over it and came to physical blows. Mobs were organized and riots raged in city streets. A political party, calling itself Federal Republican, was organized, the first regularly organized political party in the State. Its object was to defeat what was declared to be "a deep and wicked conspiracy against the liberties of a free people," and to that end it sought coöperation with political leaders in other States, with the purpose of organizing a national—or rather an interstate—movement.

The real leader of this opposition to the Constitution was Governor Clinton, and his chief aids were Robert Yates, John Lansing, Jr., Samuel Jones, and Melancthon Smith; the last named being perhaps the most effective of them all. Hamilton, of course, was the chief protagonist of the Constitution. By his side, with eager zeal, came John Jay, who probably exulted in Hamilton's alleged violation of the instructions of the Legislature, in memory of the way in which, to secure the treaty of peace with England, a few years before he had led his two colleagues at Paris in throwing to the winds the still more imperative instructions of Congress. There came to the same side, too, such powerful aids as Robert R. Livingston, the Chancellor; James Duane, Mayor of New York; Richard Morris, John Sloss Hobart, and Richard Harrison.

All these were among the members of the State Convention which was held at Poughkeepsie, beginning on June 17, 1788, to consider the Constitution. The Governor had merely mentioned the subject in the most formal and colorless way in his opening address to the Legislature in January, 1788, and was doubtless opposed to the holding of such a Convention and to any formal consideration of the Constitution, although four States had already ratified it and three others were considering it. He probably hoped that it would be ratified by nine States without New York. In that case a Federal Union would be formed of which New York would not be a member. If the scheme proved a failure, as he confidently expected, New York would be well out of it. If it proved a success, New York could gain



admission at a later date. The Union would always be glad to welcome so great a State as New York, which indeed geographically would divide the Union into two parts. If not, New York was great enough to get along alone.

Although the Governor thus refrained from laying the matter before the Legislature, that body finally took it up. This was done at the instance of Egbert Benson, who moved the calling of a State Convention to act upon it. This motion was opposed by Clinton's followers, but finally prevailed through Benson's patriotic persistence. In the Convention the leaders of the two sides were Hamilton and Melancthon Smith. It was a battle royal between two men of masterful ability. On July 11 John Jay moved the adoption of the Constitution without amendment; provided, however, that amendments might be recommended. A few days later Melancthon Smith declared that Hamilton's arguments had converted him to the side of the Constitution. That practically ended the contest. Governor Clinton, who was a member and president of the Convention, privately advised his friends to yield and to vote for ratification. On July 28 the vote was taken on Jay's resolution changed so as to read "that the Constitution be ratified in full confidence that the amendments proposed by this Convention will be adopted." The vote was thirty ayes to twenty-seven nays. Clinton declined to vote, and three other members were not recorded. The thirty affirmative votes were therefore one short of a majority of the Convention, which had sixty-one members; but they were a

majority of all that were cast. Had the vote been taken at the opening of the Convention, it would have stood two-thirds against the Constitution.

This was the greatest defeat that Clinton had thus far suffered in his political career; indeed, the first that he considerably took to heart. He had, it is true, been defeated in some of his policies against the British loyalists. He had been compelled to yield to Congress the power to regulate the commerce of the States. But those were minor matters compared with this, which at a stroke reduced him from being the elected sovereign of an independent State to being the Governor of one of the members of a Nation with a national government supreme above him. All these defeats, moreover, had been inflicted upon him by the same man, a young man who had been a child in arms when he was a conspicuous officer in the French and Indian War, and had been still too young to vote either for or against him when he was first elected Governor of New York. Thereafter there was war between them; a war which for years dominated the politics of the State, materially affected and indeed dominated the politics of the nation, and made a deeper lasting impress upon American history than any other occurrence of that time.

## CHAPTER VI

### UNDER THE CONSTITUTION

THE vote of New Hampshire on June 21, 1788, made the Constitution of the United States valid, five weeks before New York accepted that instrument. The latter State was therefore not, strictly speaking, a charter member of the United States under the Constitution, but was admitted after the Union had been formed. The same was true of Virginia, which ratified the Constitution four days later than New Hampshire, and of North Carolina and Rhode Island, which postponed the act for several months. Moreover, having thus delayed acceptance of the Constitution, New York also delayed placing herself fully under its provisions. The ratification of the Constitution was perfected and proclaimed by the moribund Continental Congress at New York on July 14, and an order was issued for putting it into effect by the various States. On July 28, as we have seen, the New York Convention ratified the Constitution. But it was not until October 13, 1788, that Governor Clinton summoned the Twelfth Legislature to meet at Albany to take action upon it, and he set the date of the meeting as late as December 8. It was not until December 11 that a quorum was secured.

In his opening address Clinton said that he had called the special session in order to lay before it the report of the proceedings of the Constitutional convention at

Poughkeepsie, more than four months before, and also the action of Congress. He of course fully acquiesced in what had been done, but he urged that New York should be insistent and resolute in demanding the adoption of the amendments to the Constitution, without assurance of which the State would not have voted for ratification. In a subsequent special message he expressed regret that he could not have called the Legislature together in time to have it provide for the popular election of Presidential Electors. Since that could not be done, he recommended that the Legislature appoint them in a way which should most closely approximate election by the people. Congress had designated the first Wednesday in January, which would be January 7, for the appointment or election of Electors, and the first Wednesday in February for the meetings of the Electors for their choice of the President. New York was entitled to eight Electors. Accordingly on December 18 the Senate passed a bill providing for the choice of four Electors by itself, and four by the Assembly. This the Assembly rejected, and it passed instead a bill providing for the nomination of eight candidates by each house and then the election of eight by the two houses in joint session. This the Senate rejected, and nothing more was done until January 5, when a conference of the two houses was held, with no result. The day set for choice of Electors was only two days off, and no method of choosing them had been adopted. Finally on January 7 the Senate repassed its former bill, and the Assembly again rejected it; and the Assembly repassed its former bill, and the Senate



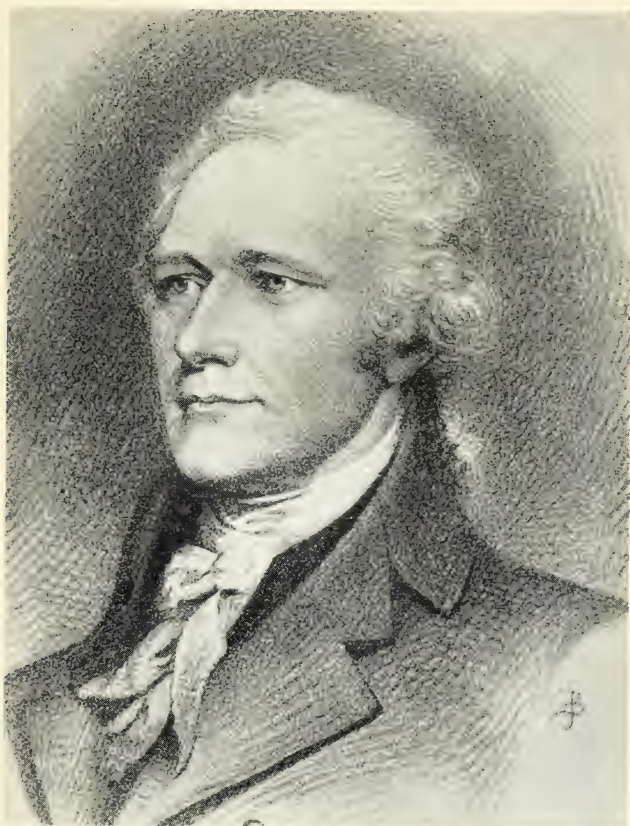
rejected it. The result was that New York, having had none but an *ex post facto* part in the adoption of the national Constitution, had no part whatever in the first election of a President of the United States. A similar disagreement between the two houses of the Legislature prevented the election of United States Senators, so that New York was unrepresented in that body at the first session of the United States Congress.

The Twelfth Legislature took, however, some important action concerning relations with the Indian tribes, and it enacted a measure drafted by Samuel Jones "for the amendment of the law and the better advancement of justice," which was of inestimable value in reforming and improving the State's whole system of jurisprudence. On March 3, 1789, it adjourned *sine die*.

Now came the first great electoral contest in the State of New York. The people were pretty evenly divided between Federalists and Anti-Federalists, and each party had a leader of transcendent power. The Federalist leader was Hamilton; young, gifted with genius of constructive statesmanship beyond any man of his time, enjoying the confidence and special favor of Washington, but fatally lacking in the party-leading and men-manipulating arts of the practical politician. The Anti-Federalist leader was the veteran Clinton, with tremendous prestige of achievement, with great intellectual ability, with unsurpassed personal popularity, and with consummate mastery of every trick in

the whole game of political diplomacy. And Clinton was a candidate for reëlection, for his fifth consecutive term.

The election was to be held in April, 1789. As early as February 11 the Federalists held a caucus in New York, to select a candidate with whom to oppose Clinton. Hamilton dominated the meeting; with him in it were James Duane, William Duer, Robert Troup, Richard Harrison, and—*mirabile dictu*, and for that occasion only—Aaron Burr. The strongest possible candidate would doubtless have been John Jay; but he was absorbed in national affairs and was not to be thought of. Next to him, most Federalists turned toward Richard Morris, the Chief-Justice of the Supreme Court, while a considerable minority favored Pierre Van Cortlandt, the Lieutenant-Governor. Hamilton, however, succeeded in persuading them to nominate Robert Yates, who was an Associate-Justice of the Supreme Court. Now, Yates was an Anti-Federalist. He had withdrawn from the Constitutional convention at Philadelphia because of his opposition to Hamilton's plans for a national Constitution. He had bitterly opposed ratification of the Constitution by New York. Nevertheless, after its ratification he was prompt to give it full support, telling a grand jury that they and all loyal citizens must regard it as a charter second in dignity and importance only to the Declaration of Independence itself. He was not eminent for learning, though his talents were respectable; but he stood foremost in integrity, impartiality, and independence.



ALEXANDER HAMILTON

Alexander Hamilton, statesman; lawyer; born in Nevis, British West Indies, February 11, 1757; came to U. S., 1772; served in continental army; secretary of treasury under Washington, 1779; delegate to continental congress, 1782, 1788; member of federal commercial convention, 1786; regent, 1784; member of assembly, New York county, 1787; state constitutional convention, 1788; mortally wounded in a duel with Aaron Burr at Weehawken on the Hudson, July 11, 1804 and died on the following day.





There could be no question of Yates's fitness for the Governorship. Neither could there be any doubt that Hamilton had selected him not alone for his merits but also for his availability as a candidate who would divide the Anti-Federalist party and rob Clinton of many of his supporters. A letter was written to Yates, signed by a number of eminent citizens, including Philip Schuyler and Philip Livingston, asking him to accept the nomination with a view thus to "heal the unhappy divisions in the country." On February 24 he replied with his acceptance. Beside the men already mentioned, John Jay, Robert R. Livingston, and other influential men arrayed themselves on Yates's—and Hamilton's—side. On Clinton's side were his brother James Clinton; John Lansing, afterward Chancellor of the State; Melancthon Smith, Gilbert Livingston, and Samuel Jones, the first Comptroller of the State and one of the foremost jurists of the time.

For six weeks a vigorous and heated campaign was waged, ending with an election of mixed results. Generally the Federalists were successful. They elected a majority of the Legislature, and for Governor they carried most of the counties for Yates. But in his own county of Ulster, then one of the largest in the State, the vote for Clinton was so nearly unanimous as to give him a small majority in the State as a whole and thus to elect him for his fifth term. In Ulster county Clinton had a majority of 941, while in all the rest of the State there was a majority of 512 against him. He thus won by the narrow margin of 429 in a total poll of 12,343. (It must be remembered, in explanation of the

smallness of the total vote of the State, that at this time only freeholders enjoyed the franchise.) This purely personal victory went far toward consoling Clinton for the defeats which he had suffered at the hands of Hamilton. It also assured a continuance, and indeed an intensification, of the hostility between those two leaders.

Almost simultaneously with this great personal triumph of Clinton, a great counter-advantage was gained by Hamilton. The inauguration of Washington as President of the United States occurred at the end of April, and Hamilton, as his closest and most trusted friend, was made Secretary of the Treasury, then by far the most influential place in the cabinet. That assured the filling of all Federal offices in New York with Hamilton's friends, and the appointment of others to other places under the administration. Thus John Jay became Chief-Justice of the Supreme Court of the United States—an appointment which, however, must be credited to his preëminent fitness rather than to the influence of Hamilton, though it was of course greatly to Hamilton's liking. James Duane, one of Hamilton's most devoted friends, a man of wealth, of long experience in Congress, of spotless integrity, and of vast legal ability, was made United States District Court Judge. Richard Harrison, another brilliant lawyer, was United States District Attorney, and William S. Smith was United States Marshal. To these friends of Hamilton must be added Egbert Benson and two other Representatives in Congress, and the two Senators, Philip Schuyler and Rufus King, when they were chosen a

little later. In the State government, too, he enjoyed the friendship and support of Robert R. Livingston, the Chancellor, and Richard Morris, the Chief-Justice of the Supreme Court, together with various other officers, and a majority of the Legislature.

As soon as "the tumult and the shouting" of the electoral campaign had died away, on June 4 Clinton issued a call for a special session of the Thirteenth Legislature, to be held at Albany on July 6, 1789. For the first time, a quorum was present on the day appointed, and the Governor delivered a brief opening address, saying that he had convened the Legislature for the purpose of choosing United States Senators, and making no other recommendations. The response of the Legislature was brief and perfunctory, and the two houses immediately addressed themselves to the task of providing for the election of Senators. After a week of labor the mountain brought forth a particularly ridiculous mouse. The bill, on July 12, provided that when two Senators were to be chosen at the same time—something which of course would seldom happen, if indeed ever after the first election,—if each house nominated different candidates each house should be required to elect one of those named by the other, but if only one Senator was to be chosen, and the two houses named different candidates, each house might from time to time offer to the other a resolution of concurrence, naming one of its own candidates, until at last agreement should be reached. This fantastic scheme was promptly vetoed by the Council of Revision, whereupon the Legislature by joint resolution appointed Philip

Schuyler and Rufus King to be Senators; the latter for the full term and the former for the short term with the tacit understanding that at its expiration he was to be reëlected for a full term. Mr. King, it may be noted, had only recently become a citizen and resident of New York, having come from Massachusetts; but his commanding abilities and his fine record in the Continental Congress commended him to all parties in New York as a worthy Senator.

Congress having taken a hand in the Vermont controversy, and New York having reluctantly acquiesced, perforce, in the erection of what it had claimed as its northeastern counties into an independent State, the Legislature appointed Commissioners with authority to declare the assent of New York to such action. It was, however, found necessary for the Legislature, another commission, with somewhat different powers, to complete that transaction. On July 16, 1789, the during its second meeting, on March 6, 1790, to appoint Thirteenth Legislature adjourned to meet at New York on the second Monday of January, 1790, unless earlier convoked by the Governor.

Meantime the political fight between Hamilton and Clinton had been marked with another first-class stroke by the veteran Governor. Egbert Benson, a friend of Hamilton's, had been Attorney-General of the State, but upon his election to Congress had resigned that office and had been succeeded, on May 14, 1789, by Richard Varick. The latter in turn resigned the office in September following, and on September 29 the Council of Appointment met to fill that and other



vacancies. That Council then consisted of Samuel Townsend, Peter Van Ness, John Hathorn, and John Williams, all supporters of the Governor, with Clinton himself as president. The result of the meeting was the appointment of John Lansing, Jr., to be Mayor of Albany, and Samuel Jones to be Recorder of New York, both staunch partisans of Clinton and men of great ability and fitness for office, and also—and this was Clinton's master-stroke—Aaron Burr to be Attorney-General.

In making this last appointment Clinton had doubtless three motives. One was, to fill the place with a man of undoubted ability and professional fitness; and of Burr's answering that description there could be no question. Another was, to cause schism in the Federalist party. Burr had identified himself with that party in promoting the candidacy of Yates against Clinton, though he doubtless did so for reasons of political expediency and not at all on principle, the latter being something entirely foreign and unknown to him. He had a considerable following among the younger men of that party, and Clinton shrewdly judged that they would adhere to him if he transferred himself to the Anti-Federalist party. The third and by no means least motive was to oppose Hamilton with his bitterest enemy, for such Burr had already become. The instinctive dislike which had arisen between the two young men at their first meeting had grown steadily more intense; on Burr's side through jealousy of Hamilton's superior genius and the resentment which turpitude always feels against integrity, and on Hamilton's

side through recognition of Burr's essential dishonesty and corruption and also because of Burr's venomous hostility to Washington, whom Hamilton loved and revered above all other men. Clinton deemed it a shrewd move, therefore, to put this bitter foe of Hamilton's into an influential political office, rightly assuming that for the sake of the place, and especially for the sake of thus being able to spite Hamilton, Burr would not hesitate to turn his political coat. In later years Clinton had cause to realize that the man of whom he had thus made use was unworthy of recognition by decent statesmen, being always for sale at the highest price he could command.

No immediate results of this appointment of Burr were apparent, however, and the affairs of the State pursued an even tenor until the next year. The Thirteenth Legislature met again at New York on January 4, 1790, and secured a quorum on the following day. The Governor's address recommended the creation or improvement of means of communication, and as a result the Legislature on March 4 made an enactment for the building of roads and the surveying of routes for canals. A Legislative Apportionment act was also passed, on February 7. The Governor submitted the twelve amendments to the Constitution of the United States which had been proposed by Congress, arrangements were made for a census of the electors of the State, the revised action concerning Vermont, already mentioned, was taken, and on April 6 the Legislature adjourned without day.

The most important political act of this Legislature related to the Council of Appointment. The body had been solidly Anti-Federalist. But the Federalists were now sufficiently in control of the Assembly to change its complexion. Accordingly, on January 15 they elected Philip Schuyler and Philip Livingston, who were Federalists, and John Cantine and Edward Savage, who were Anti-Federalists—or Republicans, as Clinton's followers now began to call themselves. This was a commendable division of the Council between the parties, and certainly gave Clinton no cause for complaint, since he was *ex-officio* president of the Council and had the casting vote. Unfortunately, however, Philip Schuyler was United States Senator. At the time of his election to the Council nobody thought of the impropriety of his holding the two offices. But that was presently thought of, and twelve days later the Assembly passed a resolution declaring it contrary to the United States Constitution for a person holding office under the Federal government to be at the same time a member of the Legislature of New York, and that accordingly when a member of the Legislature was elected or appointed to Federal office his seat should be declared vacant. This entirely proper resolution was promptly adopted by the Senate also and became law. Under it, therefore, Schuyler's seat in the State Senate was declared vacant; as were also the seats of James Duane, who had been appointed Judge of the United States District Court, and of John Hathorn and John Lawrence, who had been elected Representatives in Congress.

The question of Schuyler's place in the Council of Appointment then arose. At a meeting of the Council on April 3 Mr. Cantine suggested that as the Council was, under the Constitution, to consist of four Senators and as General Schuyler's seat in the Senate had been declared by the Senate to be vacant, that gentleman could no longer be a member of the Council. That seemed logical. Philip Livingston, however, replied that if the Senate thus had power to vacate seats in the Council, it, instead of the Assembly, could control the composition of that body, which was certainly contrary to the intent of the Constitution; wherefore he proposed a resolution of the Council to the effect that after the Assembly had appointed a man to the Council, the Council itself had no power to expel or disqualify him, even though his seat in the Senate had been declared vacant. This of course by implication, though not in terms, referred the matter back to the Assembly, where it obviously belonged. No action was taken by the Council upon either Mr. Cantine's suggestion or Mr. Livingston's proposal, and nobody appears to have thought of a pertinent precedent of nine years before when Ephraim Paine, a member of the Council, had been expelled from the Senate. At that time the Assembly at once elected Arthur Parks, a Senator, to Paine's place. But the Council, including Mr. Parks himself, formally protested against this proceeding and against Mr. Parks's right to a seat in that body; though in the face of that protest Mr. Parks did occupy his seat in the Council until the next Assembly, the next year, elected another Senator in his place.



A few days after the discussion raised by Mr. Cantine and Mr. Livingston, a motion was made by Mr. Savage and adopted by the Council, requesting the opinion of the Assembly on the question. The Assembly after some debate replied that it considered it a question of law upon which it could not properly pass. Thereupon the matter was dropped, and General Schuyler, though in the face of protests and objections, continued to fill his place in the Council of Appointment until his successor was regularly elected by the next year's Assembly.

Following this, a sharp contest arose over appointments to office. Richard Morris, a Federalist, resigned his place as Chief-Justice of the Supreme Court of the State, and Robert Yates was appointed to succeed him. This was of course acceptable to the Federalist members of the Council of Appointment, and was cordially acquiesced in by the Anti-Federalists. Indeed, the appointment was made at Clinton's own suggestion, despite the fact that Yates had been his opponent in the Governorship campaign, possibly because he was glad to get Yates out of politics, though doubtless also because he appreciated his fitness for the place. Then came a fight over Yates's successor as Associate-Judge. The Federalists nominated Egbert Benson, and the Anti-Federalists nominated John Lansing and the latter was chosen by virtue of the Governor's casting vote. A similar contest was decided similarly for the choice of a Mayor of Albany to succeed Mr. Lansing, and for several other officers.

The Fourteenth Legislature assembled at New York on January 4, 1791, and secured a quorum the following day. In his address the Governor called attention to the need of making such provision for the creditors of the State as would maintain the public faith; in response to which the Legislature passed a suitable act on February 23. His report that the census of electors had been taken, and that a legislative reapportionment of the State was in order, led to the enactment of an Apportionment bill on February 7. The need of better means of communication and transportation was again urged, and the Legislature on March 24 provided for the building of some roads and the surveying of canal routes. On the same day also, in response to a memorial from the Regents of the State University, transmitted by the Governor, authorization was made for the foundation of a College of Physicians and Surgeons. On that date the Legislature adjourned without day.

The great event of this session of the Legislature was the election of a United States Senator to succeed Philip Schuyler. In order justly to appreciate the circumstances, it must be remembered that at this time New York State was dominated by three great families. These were the Schuylers, the Livingstons, and the Clintons. Of the first, General Philip Schuyler was the head, while his son-in-law, Alexander Hamilton, was the most active protagonist. General Schuyler was one of the most worthy veterans of the Revolution, and a man of commanding ability, approved devotion to the public welfare, and spotless integrity; but also of unbending pride and autocratic spirit. Robert R.

Livingston was head of the Livingston clan ; also a man of vast ability, high patriotism, unsullied character, and singular personal charm. The Governor himself was the head of the Clintons, ably seconded by his gallant soldier brother, James, and the latter's son, DeWitt, destined to be the greatest of them all.

Between the aristocratic Schuylers and Livingstons there was a natural affinity, rather than between either of them and the more democratic Clintons, and it was through a coalition of those two families that Hamilton had been able to defeat Clinton and secure New York's ratification of the Federal Constitution. At that time Chancellor Livingston was one of Hamilton's warmest friends and most resolute supporters. But with that strange lack of ability to manage men and parties which characterized him, Hamilton on becoming Secretary of the Treasury quite neglected to give any recognition to the Livingstons. John Jay, whose wife was a Livingston, was indeed made Chief-Justice, but, as we have seen, that was scarcely to be credited to Hamilton's influence. Moreover, that appointment was actually an offense to the Livingstons, who had regarded the Chancellor as the logical candidate for that place. Schuyler was made Senator, but no Livingston was chosen to the other Senatorship, but a newcomer from Massachusetts instead. Nor was any member of the Livingston family chosen for a foreign mission, or for any other place under the administration of which Hamilton was the chief political manager.

It would not have been human nature for Robert R. Livingston to overlook or to condone such disregard of

his friendship and his aid. His appreciation of Hamilton's ability may not have been lessened, but his personal and political feeling toward him changed in a day from affection to bitterness. He called the family together in council, and decreed that thereafter there should be no favors shown to Hamilton, or indeed to the Federal administration so long as he dominated it. Later, when Washington offered to Robert R. Livingston the mission to France, which under other circumstances would doubtless have been gladly accepted, it was almost indignantly declined.

The open rupture between the Schuylers and Livingstons came in 1791. Early in that year a Senator was to be chosen to succeed Schuyler, who, as we have seen, had accepted the short term on the understanding that he was to be reëlected. But less than two years had made marked changes in politics, and Clinton was now relentlessly resolute upon the defeat of Schuyler, not merely nor so much because he was Schuyler, as because he was the father-in-law of Hamilton. In the alienation of the Livingstons from Hamilton and therefore from the Schuylers he saw his opportunity, and in Aaron Burr he found his facile tool. He determined to put Burr forward as a candidate against Schuyler, and then, to assure the support of the Livingstons, he promised to secure the appointment of Morgan Lewis, brother-in-law of Chancellor Livingston, as Burr's successor as Attorney-General of the State.

This "deal," as it would now be called, succeeded. Nominally there was a Federalist majority in the Legislature, which should have assured Schuyler's



reëlection, a result upon which both he and Hamilton confidently counted. But the Livingston influence changed a number of votes, and, as Clinton had reckoned, several of Burr's personal adherents were ready to go over to the Anti-Federalist side in his support. Philip Livingston, a State Senator, alone of all his clan remained loyal to Hamilton and voted for Schuyler. In the Senate there were eight absentees, or at least non-voters. Of the sixteen present and voting, twelve voted for Burr and only four for Schuyler. In the Assembly Burr had a majority of only five. A motion was made to reconsider the vote and to substitute the name of Egbert Benson for that of Burr, but it failed. So Burr was elected Senator, and in fulfillment of the "deal" in the following November Morgan Lewis was made Attorney-General of the State.

It should be added that the Livingstons generally gave as the reason for their revolt against Hamilton their disapproval of his funding system, and particularly his plan for the disposition of the State debts. There is no occasion to doubt the sincerity of their disagreement with him on this ground, though it is impossible to doubt that the other motives which we have described had commanding weight.

The Apportionment act already mentioned as having been passed at this session was based on an enumeration of 19,626 electors, or 817 for each of the twenty-four Senators. The act made a Southern district of Suffolk, Queens, Kings, Richmond, New York, and Westchester counties, with eight Senators; a Middle district of Dutchess, Ulster, and Orange counties, with six Sen-

ators; an Eastern district of Washington, Columbia, Clinton, and Rensselaer counties (the last newly formed), with five Senators; and a Western district of Albany, Montgomery, Saratoga, and Ontario counties (the latter two newly made) with five Senators. Ten days later the new counties of Herkimer, Otsego, and Tioga were created out of parts of Montgomery county. The act also directed that the Assembly should consist of seventy-three members, apportioned among the counties as follows: Albany, Dutchess, and New York, seven each; Columbia, six; Montgomery, Orange, Rensselaer, Ulster, and Westchester, five each; Saratoga, Suffolk, and Washington, four each; Queens, three; Kings, Richmond, Ontario, Herkimer, Otsego, and Tioga, one each.

The Fifteenth Legislature met at New York on January 5, 1792, with a quorum present on the first day, and remained in session until April 12. The Governor urged further attention to means of communication and transport, and in consequence acts were passed on March 30 for the incorporation of two canal companies—one to operate waterways from the Hudson River to Seneca Lake and Lake Ontario, and one to provide for navigation between the Hudson and Lake Champlain. His recommendations concerning education, a subject in which he was supremely interested, led to the appropriation of 6,900 pounds for Columbia College and 750 pounds a year for five years to the same institution for professors' salaries; and 1,500 pounds a year for five years to be apportioned by the Regents of the State University among deserving

academies. Provision was also made for the appointment by the Legislature on November 6 of thirteen Presidential Electors, the number being subsequently reduced to twelve by amendment on November 20, 1792.

The Sixteenth Legislature met in special session, according to the action of its predecessor, on November 6, 1792, for the purpose of choosing Presidential Electors, and amended the act and completed that work on November 20. It continued in session thereafter for other legislation, and on December 18 passed a bill apportioning the State into Congress districts. With the intermission of a recess at the holidays, it prolonged its meetings until March 12, 1793, when it adjourned without day.

## CHAPTER VII

### CLINTON AND JAY

**G**OVERNOR CLINTON'S fifth term was drawing toward its close. His successor was to be chosen at the election of April, 1792. Thitherto he had invariably been his own successor. His original election had been practically unopposed, and at three subsequent elections he had been returned without serious demur. The first real contest had occurred in 1789, and his surprise, resentment, and wrath at the impertinence of young Alexander Hamilton in organizing against him an opposition which all but defeated him knew no bounds. He was, however, too wary and wise a politician not to take warning from the incident. He realized that his tenure of office was no longer secure; he was no more to be reëlected as a matter of course, but must fight. During these three years of his fifth term, therefore, he paid close attention to what in later years would have been called "fixing his political fences," and the beginning of 1792 found him ready for the fight.

His foes also began their preparations well in advance, though it was not until two months before the election that their plans were complete and their candidate was named. Their first thought was for their former candidate, Robert Yates, but despite repeated pleadings he positively declined to run. He would support whatever candidate the Federalists selected, but





MELANCTON SMITH

Melancton Smith; born in Jamaica, L. I., of Quaker antecedents in 1724; in business a merchant; member of first provincial congress in New York City, May 23, 1775; sheriff of Dutchess county, 1777; commissioner for detecting and defeating conspiracies against the government, 1777; member of continental congress, 1785-88; member of congressional committee that reported in 1787 the final draft of the Ordinance establishing a government of the Western Federal Territory, popularly known as the Ordinance of Freedom of the Northwest Territory; representative from Dutchess county in the Poughkeepsie convention for ratifying the Federal constitution, 1788; member of assembly, 1792; circuit judge, 1792; elected a sachem of the Tammany Society in 1791, when Josiah Ogden Hoffman was grand sachem; died in New York City, July 29, 1798, the first victim of the yellow fever epidemic.

This portrait was made from his only known portrait, which was in pen and ink, presumably drawn by one of his associates on the Ordinance Committee and found in an old trunk forty years after his death. On it were the words: "Mr. Smith—1787-C. Congress."



preferred himself to remain Chief-Justice of the Supreme Court. Stephen Van Rensselaer, the great patroon, was the next choice, and was repeatedly asked to accept the nomination, but he too declined. Robert R. Livingston was approached, but positively refused to let his name be considered. A strong movement was then developed for Burr, promoted by the younger men of both parties, which for a time seemed likely to succeed. At the last moment, however, Schuyler and Hamilton threw all their influence into the scale and prevailed upon John Jay to accept the nomination. It will be recalled that he had been suggested in 1786, but vetoed the movement, and that in 1789 he would have been the candidate instead of Yates but for his absorption in national affairs. Now he assented to Schuyler's and Hamilton's urgings, though on condition that he should not resign the Chief-Justiceship in advance of election. He was nominated at a Federalist caucus in New York on February 13 and again at a mass-meeting a few days later. Stephen Van Rensselaer was nominated for Lieutenant-Governor.

Two days after the Federalist caucus the Anti-Federalists met, also in New York, and renominated George Clinton and Pierre Van Cortlandt for the places which they had filled for so many years. Some further efforts were made by Burr's followers to place him in the field as a third candidate, and there is little doubt that he would have accepted the nomination and become a candidate had it not been for his consuming hatred of Hamilton. A cursory canvass of the situation indicated that his support would be drawn more largely

from Clinton's than from Jay's ranks, and there was therefore danger that his candidacy would defeat Clinton and elect Jay. Unwilling to give Hamilton a chance of such triumph, he finally decided not to run, and made a public announcement to that effect on March 15. Thereafter the contest was squarely between Clinton and Jay, with Burr using all his influence and exertions in Clinton's favor. The Livingstons also threw all their influence on Clinton's side.

During the legislative session a serious attack was made upon Clinton in connection with the sale of public lands. At the establishment of its independence the State was the possessor of more than seven million acres of unimproved land, much of which was capable of improvement into great value. In 1791 the Legislature authorized the Commissioners of the Land Office to sell these lands in such parcels, at such prices, and on such terms as they pleased. It was obviously little short of scandalous to give such unlimited power to any men, yet it was done without serious objection and with the assent of both parties, so great was the eagerness to encourage immigration and settlement. Now, the Commissioners to whom this enormous transaction was entrusted were the Governor, George Clinton; the Secretary of State, J. A. Scott; the Attorney-General, Aaron Burr; the State Treasurer, Girard Bancker; and the State Auditor, Peter T. Curtenius. During the year 1791 they sold 5,542,173 acres of land for the sum of \$1,030,433. That was a small sum for so large an area, averaging little more than eighteen cents an acre. Worst of all, however, it appeared that no less than



3,635,200 acres had been sold to one man, a notorious speculator, Alexander McComb, at the price of eight pence or sixteen cents an acre, to be paid in five yearly instalments, without interest and with a discount of six per cent. on all payments made in advance. McComb was afterward sent to jail for this cause.

There can be no question that this was all wrong. It was obviously contrary to public interest to dispose of the land in such large tracts, to men who were obviously and necessarily speculators and who would hold the land unimproved until they could resell at a profit. A long and acrimonious discussion ensued in the Legislature, in the course of which it was pretty directly charged, or at least insinuated, that the Governor and his friends had been personally interested in the transactions and would profit from them. This charge undoubtedly lost Clinton many votes, although it was doubtless entirely without foundation. Burr was the only one of the Commissioners whose honesty was not above suspicion, but not even against him could corruption be proved. Some time after the election, Mr. McComb went before the Mayor of New York and made affidavit that the Governor had not been either directly or indirectly interested in the sales of lands to him. A resolution was introduced into the Legislature by Colonel Talbot, of Montgomery county, severely condemning the Commissioners for lack of judgment in the transactions, though not imputing dishonest acts or motives to them. This was finally defeated, and in its place was adopted, by a vote of 30 to 25 in the Assembly, a resolution fathered by Melancthon Smith

approving the conduct of the Commissioners. Mr. Smith was a man of the highest integrity and was unquestionably sincere in his act, which went far toward silencing criticism of the Commissioners. Yet his strong personal attachment to the Governor justifies the assumption that a part of his aim was to vindicate that official in the eyes of the electorate at the polling which was then only a few days distant. He doubtless believed, and rightly, in Clinton's integrity, and wished to vindicate it against unjust aspersions; but we can scarcely believe that he approved the judgment of the Commissioners in making those monstrous sales of land as they did.

The campaign was conducted with all possible vigor on both sides, and with a regrettable degree of acrimoniousness, until the polls closed on election day. Nor indeed was it ended then, for the closeness of the result led to a bitter after-election contest and to a lasting belief, often expressed, that the result was not honestly declared. The law at that time required the votes to be canvassed by a joint committee of the two houses of the Legislature. The ballot-boxes of the various polling places were delivered to the Sheriffs of the counties and by them transmitted to the Secretary of State, who in turn delivered them to the canvassing committee, who were to count all the individual ballots and declare the result; and that declaration was to be final, without appeal. It is probable that this provision was illegal so far as the votes for members of the Legislature were concerned, since the Constitution followed the ancient rule of making each house the judge of the

election of its own members; but it was valid so far as votes for Governor and Lieutenant-Governor were concerned.

The canvassing committee met on the second Tuesday in June, 1792, to be confronted immediately with a grave technical problem as to the validity of some of the ballots before them. The votes of Otsego, Clinton, and Tioga counties were challenged. In the case of Otsego, there was no dispute as to the regularity of the election or the identity of the ballot-boxes and their contents. But it was pointed out that the Constitution provided that Sheriffs should be appointed annually, and forbade any man to hold the office of Sheriff for more than four successive years, or to hold any other office at the same time; that Richard R. Smith was appointed Sheriff on February 17, 1791, for a year expiring on February 18, 1792; that on January 13, 1792, he wrote to the Council of Appointment declining reappointment; that on March 30 Benjamin Gilbert was appointed Sheriff, and qualified for and entered upon that office on May 11; that on the first Tuesday in April Richard R. Smith was elected Supervisor of the town of Otsego, and entered upon that office on the first Tuesday in May; and that the ballot-boxes of the county were delivered to Smith as Sheriff, and forwarded by him as Sheriff to the Secretary of State. It was contended that Smith was not Sheriff at that time, since his term of office had expired on February 18 and another man had been appointed in his place, and he

himself had accepted another office; therefore the ballots had not been delivered to and transmitted by the Sheriff, as required by law, and should not be counted.

In the case of Tioga county, the Sheriff delivered the box to a special deputy who, falling ill and unable to complete his journey, delivered it to his clerk, who took it to the Secretary of State; wherefore it was argued that those ballots should not be canvassed.

In the case of Clinton county the Sheriff sent the box to the Secretary of State by the hands of a man who was not his deputy; and for that reason it was argued that those ballots should be rejected.

On the other hand it was contended that there was no question as to the identity or the integrity of the ballots, and that therefore despite any technical irregularity in the manner of their conveyance they should be canvassed and the clear intent of the voters should thus be honored. The canvassers were divided in opinion, seven being in favor of rejecting the ballots of the three counties, and three in favor of accepting them. The great importance of the question lay in the fact, which was well known, that the result of the election for Governor depended upon it. If the votes of Otsego county were rejected, Clinton would be elected; while if they were accepted and counted, Jay would be elected. Clinton's friends on the canvassing committee, therefore, led by Melancthon Smith and Samuel Jones, were for rejecting the ballots of the three counties, and Jay's friends, led by Isaac Roosevelt, were for accepting them.



The committee finally resorted to the extraordinary expedient of referring the question for decision to the two United States Senators. Rufus King gave his opinion in favor of accepting and counting the votes, all excepting a few which had been tied in a bundle to the outside of a box. He argued in the Otsego case that Smith was probably legally Sheriff, but at any rate was *de facto* Sheriff, since his successor had not yet qualified at the time of the delivery of the boxes, and that therefore while his acts beneficial to himself might be void those tending to public utility were valid; that the votes from Clinton county should be counted, because a Sheriff could deputize by parole; and that those from Tioga county should also be counted, because while a Sheriff's deputy might not make another a deputy, the election law should be construed liberally and in furtherance of the right of suffrage. Aaron Burr, on the contrary, held that the Otsego votes should be rejected because the Sheriff did not hold over under common law, and there was no hold-over statute in his favor in New York; that the Tioga votes should be rejected because a deputy could not make another deputy; and that the Clinton votes might be counted because a Sheriff might make a deputy by parole.

Upon receiving these opinions the canvassing committee voted upon the course they should pursue. Melancthon Smith and five others voted to reject the ballots of all three counties, while the other four—including Samuel Jones, the ablest lawyer on the committee and a supporter of Clinton—voted for their acceptance. They were therefore rejected and, the

remaining votes being canvassed, Clinton was declared elected by a majority of 108 votes. Had the rejected ballots been counted, Jay would have been elected by a much larger majority.

There can be no doubt that this decision of the canvassers was grossly wrong. It confessedly nullified the undisputed will of the people, and it did so on the strength of technicalities of the most dubious kind. Since that time judicial decisions of the highest authority have been exactly contrary to the arguments of Burr and to the determination of the majority of the canvassers. That such a man as Melancthon Smith should have made himself party to such a job, and indeed should have taken the lead in it, is a melancholy illustration of the power of factionalism to misguide even men of the purest character. It is not surprising that a storm of indignation swept the State. Mass-meetings of wrathful protest were held, and outraged passions were with difficulty restrained from violence. A word from Jay would have plunged the State into civil war. But that word was not spoken. On the contrary, that illustrious man, with a patience and dignity above praise, counselled moderation and emphasized the necessity of obedience to the laws. It would have been to Clinton's everlasting honor if he had rejected the finding of the canvassers and demanded the counting of ballots which he knew to have been honestly cast and honestly offered for counting. But he did not. He acquiesced in the result as a matter over which he had

no control, as of course technically he had not. Legally, he was entirely within his right. Morally, it is impossible to acquit him of grave blame.

Upon nobody in the whole sordid and iniquitous business, however, did so much culpability fall as upon Burr. We may absolve Clinton because he had come almost to regard himself as having a vested right to the Governorship for life. We may absolve Melancthon Smith, whose blind devotion to Clinton misled him more than once or twice. But Burr was inexcusable. He knew that his legal opinion was deliberately insincere and false. His motives were sordid and corrupt. He had no respect for the suffrages of the people. He wanted to defeat Jay because he hated him and still more hated Hamilton, and he was glad to bring an indelible smirch on Clinton's title. His life-long philosophy was to advance his own interests by betraying and destroying the interests of others. It is not the least of his titles to infamy that he was thus dominantly instrumental in bringing this first great reproach upon the integrity of the government of the State of New York.

The State was, moreover, being irresistibly drawn into that vortex of alien factionalism in which the whole republic came perilously near to being engulfed and lost. Instead of Federalist and Anti-Federalist or Republican, the terms "Anglican" and "Gallican" were being used to describe the two parties; the latter being applied with far more truth than the former. A striking exhibition of this spirit was manifested at a great public banquet which was given to Clinton shortly after his

inauguration for his sixth term. His installation occurred on July 2, and on July 19 the banquet was given to him by his political friends in New York City. The venerable Samuel Osgood, who had been Postmaster-General, was toastmaster, and the toast list included "The Constitution of the United States," "General Washington," "Thomas Jefferson," and "The French Republic." No other member of the United States government was mentioned, and no other foreign country. At that time the French Republic had not yet been proclaimed nor the king been deposed!

It was inevitable that Clinton, in these circumstances, should enter upon his sixth term of office amid intense and unsparing hostility, not of the mob but of a large part of the best element of the State. Many of his own supporters were alienated from him, shocked at the spectacle of his benefiting from annulment of the popular will. They were also attracted to Jay by his demeanor, which would have been worthy of Washington himself. "The reflection that a majority of the electors were for me," he wrote, "is a pleasing one. That injustice has taken place does not surprise me. . . . A few more years will put us all in the dust, and it will then be of more importance to me to have governed myself than to have governed the State."

The Governor began, however, to improve the political opportunities which his sixth term afforded him. The creation of several new counties and the growth of the State in population and general interests had so increased the business of the Supreme Court as to overburden the three Justices with labor, and the



Council of Appointment in consequence determined to appoint a fourth Justice. That body was at this time equally divided between the two parties, with the Governor as president casting the deciding vote. It was therefore practically under Anti-Federalist control. On October 2 it voted, by virtue of Clinton's vote, to appoint Aaron Burr to the bench. But he was then United States Senator, and upon brief reflection he decided that the latter place gave him far greater opportunities for political activities of his peculiar kind than the Justiceship would do, and he therefore declined the appointment. Morgan Lewis, the Attorney-General, was then appointed, and Nathaniel Lawrence was appointed to succeed him as Attorney-General.

When the Legislature met in special session on November 6, as already recorded, to choose Presidential Electors, the controversy over the rejected ballots of the April election was reopened. The Federalists in the Senate objected to the seating in that body of John Livingston, from the Eastern district. That district comprised Clinton county, the ballots of which had been rejected. It was argued that if the votes of Clinton county had been counted not Mr. Livingston but Thomas Jenkins, his opponent, would have been elected, and that while the canvassing committee might have had the right to reject votes for the Governorship, the Senate itself was the supreme judge of the election of its own members and had a right to hold that those votes were improperly rejected. As the ballots had been burned—contrary to the custom which required their preservation—and therefore could not

now be counted, the election should be annulled and a new one ordered. Clinton's friends, however, took the extraordinary ground, in defiance of the Constitution, that the action of the canvassers was finally binding upon the Senate and that Mr. Livingston was therefore entitled to his seat, and this view prevailed by a vote of 12 to 11.

A few days later a company of about eighty men representing nearly all parts of the State came to New York and were introduced to the Assembly by Josiah Ogden Hoffman, one of the foremost lawyers of New York. They declared themselves to be the deputies of the people of the State, come to memorialize the Assembly for an investigation and redress of the outrage which the majority of the canvassing committee had perpetrated upon the voters of three counties of the State and therefore upon the whole State. The memorial was received and was referred to the committee of the whole, and ten days later was taken up very seriously. Many witnesses were examined and their depositions were entered upon the journal of the Assembly, the case being conducted for the memorialists by Mr. Hoffman and by James Kent, afterward the famous Chancellor of the State.

While this inquest was in progress, Clinton's friends presented a memorial demanding the impeachment of William Cooper, Judge of Otsego county, on the ground that he had encouraged illegal voting in behalf of Mr. Jay, causing men who were not freeholders to vote and preventing lawful electors from voting by gross intimidation. This memorial was also received

and investigated at great length, but no adequate ground for the impeachment of Judge Cooper could be found. In the end, also, the Assembly decided not to regard favorably the other memorial, but to sustain the action of the majority of the canvassing committee. The debates and investigations were a purely political fight, the first of its kind in the history of New York. It is not probable that either party of memorialists expected its presentation to be effective. The eighty "deputies" and their distinguished counsel could scarcely have expected the Legislature to declare the counting in of the Governor to be null and void, nor could the other memorialists have expected a Judge to be impeached for acts which, however improper in a citizen, did not in the least affect his conduct on the bench. The "deputies" were aiming to call further attention to a great wrong and to fix reproach upon the Governor and his partisans who were the beneficiaries of it, as a warning against its repetition, while the petitioners for impeachment were trying to divert attention from that attack upon the administration by "back-firing."

The net result of this agitation was decidedly favorable to the Federalists, who at the election of April, 1793, secured overwhelming majorities in both houses of the Legislature. The Governor had no occasion to convoke the new body before its regular meeting time, but during that summer his followers reëmphasized their spirit of alien faction by going into ecstasies of enthusiasm over the French Minister, Genet, who had arrived in this country and had begun his scandalous career of violating neutrality and insulting Washington.

The Anti-Federalists of New York received him with almost hysterical welcomes and adopted resolutions of sympathy and compliment. The Federalists replied by adopting resolutions commending Washington for his wise and prudent course of strict neutrality between the European belligerents.

The Seventeenth Legislature met at Albany on January 7, 1794, and James Watson of New York City was elected Speaker of the Assembly. The Governor made a brief opening address, in which he obviously strove to avoid controversial politics. He referred to the European war, and expressed pious desires for peace. He however betrayed his "Gallican" sympathies in a somewhat bitter complaint of Great Britain's slowness in surrendering the western military posts as stipulated in the treaty of peace; which was a matter pertaining to the national rather than to the State government. His most important recommendation was for a revision of the criminal code which would make it less blood-thirsty. The death penalty was then prescribed for a great number of offenses, and juries were unwilling to convict prisoners and subject them to that penalty when they would have convicted them for a more reasonable sentence. The Governor wisely argued that certainty rather than severity of punishment was the most effective deterrent of crime. Unfortunately the Legislature did not act upon his recommendations, though its successor two years later did so.

Immediately after the delivery of the address and the retirement of the Governor and the Senate from the Assembly chamber, the political conflict between the



two parties was renewed in a peculiarly significant manner. Mr. Hoffman, the leader of the Federalist forces in the Assembly, moved for the election of a new Council of Appointment. He made a scathing criticism of the existing Council, declaring its further activities to be a menace to the welfare of the State, and demanded immediate action. His motion was seconded by Ambrose Spencer and supported by several other Federalists. It was vigorously opposed by a number of the Governor's friends, who recognized it as a pretty direct attack upon him. They urged what was undoubtedly true, that the members of the Council of Appointment were constitutional officers, whose tenure was one year, and that the Assembly had no power to remove them, save by impeachment, before the end of the year for which they had been elected. If another Council were at that time elected, they insisted, the existing Council would still continue in office with full power until the end of its constitutional term. They finally proposed that, in order to give time for reflection and to permit excited passions to cool, the matter be laid over until the next day. But that would not suit Mr. Hoffman and his followers, who insisted upon the choice of a new Council that very evening. The old Council, they declared, might at that very moment be planning mischief in the appointment of a Supreme Court Justice of notorious unfitness, and an hour's delay in displacing them might mean irreparable injury to the State.

It will be remembered that a fourth Justice of the Supreme Court had recently been appointed, and that

the Council had first offered the place to Burr. It was now pretty generally conceded that a fifth Justice was needed, although the Governor himself was not convinced of it, and the Federalists were desirous of the appointment of Egbert Benson, whom it was quite certain the existing Council would never choose. The Council was supposed to favor Peter W. Yates, though there is ground to believe that the Governor himself was opposed to him though, for political reasons, not openly. Now, Mr. Benson was doubtless a better choice than Mr. Yates, although the latter would not have been in any sense discreditable; but the division of opinion among the Anti-Federalist members of the Council, and the disinclination of the Governor himself to make any immediate appointment, made Mr. Hoffman's haste for action appear somewhat uncalled for. He persisted in his demand, however, and the result was that that very evening the Assembly elected a new Council of Appointment.

The old Council had consisted of Durand Gelston, of the Southern district, Joseph Hasbrouck, of the Middle, and Robert Woodworth, of the Eastern, Anti-Federalists, and John Frey, of the Western, Federalist. The Assembly elected as the new Council Philip Schuyler, Zina Hitchcock, and Selah Strong, Federalists, and Reuben Hopkins, Anti-Federalist. Despite the strenuous opposition which had been manifested to this action, and despite the grave doubts of its constitutionality, no serious effort at further resistance

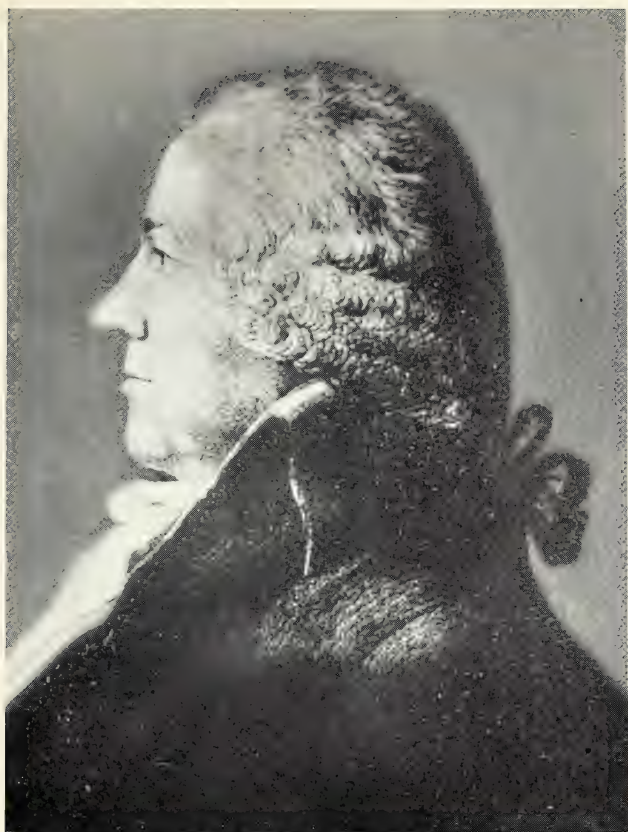


ROBERT R. LIVINGSTON

Robert R. Livingston, chancellor; born in New York City, November 27, 1746; lawyer; city recorder, 1773-75; member provincial convention, 1775; delegate to the continental congress, 1775-77 and 1779-81; one of the committee of five appointed to draw up the Declaration of Independence but returned to duties in the provincial assembly before it was signed; secretary of foreign affairs, 1781-83; delegate to state constitutional convention, 1788; chancellor, 1777-1801 and administered the oath of office to President Washington, April 30, 1789; defeated by John Jay for governor, 1798; minister plenipotentiary to France, 1801-4; assisted Robert Fulton and was his backer and partner in construction of the first steamboats; died in Clermont, N. Y., February 26, 1813.







ALEXANDER MACOMB

Alexander Macomb, merchant; born in Belfast, Ireland, July 27, 1748; emigrated to the United States and became a fur trader with John Jacob Astor; in 1791 bought from New York state 3,670,715 acres of land along the St. Lawrence river for 1 shilling (about  $12\frac{1}{2}$  cents) an acre; died at Georgetown, D. C., 1832.



appears to have been made. The old Council accepted its dismissal, and the new Council entered upon the exercise of its duties unimpeded.

The first important act of the new Council was the appointment of Egbert Benson to be a Justice of the Supreme Court, and over this a controversy arose which had far-reaching results. Down to this time the custom had invariably been for the Governor, as president of the Council, to make the nominations, and for the four members of the Council to ratify or reject them, the Governor voting only in case of a tie. But on this occasion Governor Clinton flatly refused to nominate Mr. Benson, doubtless because of nothing but personal and political animosity. Thereupon Philip Schuyler took matters into his own hand and himself made the nomination. Against this Clinton vigorously protested, insisting that the Constitution gave him the sole right and power of nomination; Schuyler on the other hand maintaining that the members of the Council had equal rights and powers with the Governor. The fact was that the Constitution was quite indefinite on that point and there was probably as good ground for the one contention as the other; though it must be conceded that Clinton's view was the more logical and was that which the Constitution ought to have warranted.

The dispute went, however, further than this. Schuyler, intent upon visiting upon Clinton the full measure of his wrath for the humiliations which he had suffered at the Governor's hand, declared that the Council had the right and power to increase at will the number of officers not limited by law, and to replace

with a new appointee any officer at the expiration of his commission. The latter contention was undoubtedly correct, provided that the Council had concurrent power of appointment with the Governor. The former was also probably correct, technically, on the same ground, though it is obvious that its application was susceptible of gross and disastrous abuse. Clinton logically argued that the Governor alone, and not the Council, was charged by the Constitution with the execution of the laws, and that therefore he was alone vested with discretion as to the number of officials needed to assist him in such execution. Concerning the second point, he conceded that the Constitution gave to officials no tenure after the expiration of their commissions, but he rightly argued that they should not be dropped and replaced with others at the caprice or arbitrary pleasure of the appointing power, but should be retained or removed discreetly with a view solely to the public good.

Clinton was right. But the fatal weakness of his position was two-fold. One was, that he was not explicitly sustained by the Constitution, which was indefinite on the points involved. The other, which practically counted for more, was that he was, as he himself must have recognized, an usurping Governor, occupying his place through a monstrous perversion of the forms of law and a flagrant denial of the indisputable intent of the voters of the State. It was a righteous resentment against the iniquitous rejection of the votes which would have elected Jay that moved the people of New York to countenance the arbitrary course which



the Assembly under the lead of Hoffman and the Council under the lead of Schuyler pursued; a righteous resentment, yet with evil consequences, for its result was to mark the remaining history of the Council of Appointment with an almost unbroken succession of political scandals. It was the introduction of the spoils system into New York politics.

The Governor in October following, 1794, published a strong protest against the arbitrary conduct of the three Federalist members of the Council of Appointment, to which those members made a long and labored but not particularly convincing reply. They attempted to convict the Governor of misusing his appointing power for personal and political ends. In that they failed, for as a matter of fact not more than two or three times in all his long administration had Clinton made appointments which were reasonably open to such criticism.

At the session of 1794 the Legislature enacted three measures arising from the disputed votes at the election of 1792. One provided that Sheriffs should hold office until their successors were appointed and qualified. Another required town inspectors of elections to canvass the votes and return the result thereof to the State canvassers. The third—by the Assembly—dismissed as “frivolous and vexatious” the movement for the impeachment of William Cooper, Judge of Otsego county. The Legislature then adjourned without day, on March 27.

The elections in April, 1794, resulted generally in favor of the Federalists. The new Legislature met at

Poughkeepsie on January 6, 1795, and the Assembly elected General William North, of Duanesburg, a Federalist, Speaker. Governor Clinton for the first time was absent from the opening. He was in fact ill, at Greenwich, with inflammatory rheumatism, and was quite unable to leave his room. He accordingly sent a written message in lieu of the usual opening address. In this excellent document he referred to the European war and the consequent desirability of improving the defenses of New York harbor. He recurred to the need of revising the criminal laws, urging the substitution of imprisonment at hard labor in many cases for the death penalty. Taking up again his favorite topic of education, he reminded the Legislature that while it had liberally provided for the aid of higher and secondary institutions of learning, it had as yet done nothing for primary schools, and he recommended that some action for their benefit be immediately taken. The Legislature made haste to comply with this suggestion, and appropriated \$50,000 a year, for five years, for distribution among the counties for that purpose.

The Legislature adjourned on January 14 to reassemble at New York on January 20, and there continued in session until April 9, when it adjourned without day. Not the least important of its business was the election of a United States Senator to succeed Rufus King, whose term expired on March 4. The election took place on January 27, and Mr. King was reëlected by a narrow majority of two in the Senate and five in the Assembly, although the Federalists had larger majorities than those in the houses. A new

Council of Appointment was also elected by the Assembly, consisting of Jacobus Van Schoonoven, Richard Hatfield, and William Powers, Federalists, and Joseph Hasbrouck, Anti-Federalist—the last-named being unanimously elected and the others by a vote of 36 to 29.

A Governor was to be chosen at the April election in 1795, and there can be no question that Clinton would greatly have liked to be returned for another term. But he realized long in advance that it was not to be. He had been Governor continuously for eighteen years. His private affairs sorely needed his attention. His health was seriously impaired, though he was still in the prime of life at fifty-six. The circumstances of the last election, when he had been arbitrarily "counted in" over Jay, bitterly rankled in the public mind and caused strong opposition to him to prevail even among former friends and supporters. Elections since then had gone heavily against his party. In these circumstances, therefore, it was not surprising that on January 22 he issued an address to the freeholders of the State announcing that he would not be a candidate for reëlection. In that announcement he was doubtless sincere, as he was also in his expression of thanks to the people for their loyal support of him and their long-continued confidence in him; but his statement that he would "retire with pleasure" must be taken with a large grain of salt. Pierre Van Cortlandt at the same time announced that, on account of his advanced age, he would not be a candidate for reëlection as Lieutenant-Governor.

## CHAPTER VIII

### JOHN JAY

THE temporary retirement of George Clinton from the political field was generally recognized as a confession of expected defeat in the impending election for the party of which he was the leader, and there was therefore no eagerness on the part of any of his lieutenants to be the candidate. There was some talk of Burr, and it is not improbable that he would have accepted the nomination if it had been offered to him. But the majority of the party leaders distrusted him and would not have him. Instead, they offered the nomination to Chief-Justice Yates, who six years before had been the candidate opposing Clinton. Probably it was the best possible choice for a hopeless case, for Yates was an entirely worthy candidate; though his willingness to accept the nomination, now from one party and now from the other, provoked much unfavorable comment. It was observed that in 1789 he received the votes of nearly half the electors of the State, and that in 1795 he received the votes of nearly all those who had opposed him before, who were the other half of the State. Thus in the course of six years perhaps nine-tenths of the voters of the State cast their ballots for him, and yet he was not elected. William Floyd was his companion on the ticket in 1795, as candidate for Lieutenant-Governor.



There was less hesitation over the candidate on the Federalist side. A few indeed suggested Burr, but they were quickly cried down. Most would have been glad to have Hamilton, but he peremptorily and wisely refused to be considered. Instead, he practically dictated the nomination of John Jay, with Stephen Van Rensselaer, the great patroon, for Lieutenant-Governor. To this choice there was little demur. Jay was immensely popular, and his unrivalled fitness for the place was generally recognized. Moreover, it was felt that he had been most unjustly "counted out" at the preceding election, and there was a laudable desire to atone for that wrong. On the other hand, there were many who looked with grave apprehension upon the nomination and the possible result. Jay had been sent by the President the year before to negotiate a treaty with Great Britain, in circumstances which made it practically certain that the result of his work would be unpopular. The treaty had been signed on November 19, and would soon be in the hands of the Senate. Its provisions had not yet been disclosed, but there was a widespread impression that when the treaty was ratified and published, there would be a storm of popular protest and resentment against it, if indeed it ever did receive ratification. Hamilton, of course, knew its contents, and probably realized how unpopular they would be and how bitter a storm of wrath would break upon Jay when the character of his work was made known. But he doubtless counted upon the day of wrath being deferred until after Jay was safely elected Governor. Possibly he also counted upon being able

to assure such delay, as indeed he was, the treaty not being laid before the Senate until long after the election. At any rate, he insisted upon Jay's nomination while Jay was still in England and unaware of the candidacy which was thus being forced upon him.

Because of Jay's absence from the country, Yates's place upon the bench, and Clinton's retirement, the campaign was notably quiet and listless. It resulted, as had been confidently expected, in a notable victory for Jay, his majority being 1,589, more than three times as large as Clinton's over Yates six years before, and about fifteen times as large as that by which Clinton had been "counted in" over Jay three years before. All the five State Senators elected were Federalists, and that party secured a strong majority in each house of the Legislature. The result was not officially announced by the State board of canvassers until May 26. Two days later Jay arrived at New York from England. He was welcomed by a great outpouring of the populace, with the enthusiastic manifestations of affection, confidence, and honor which that illustrious man richly deserved. Yet, as we shall see, this was only the first part of one of the most striking and most discreditable exhibitions of the fickleness of popular favor that history records.

Jay was formally installed as Governor on July 1, The next day the text of the treaty was published in a Philadelphia newspaper, and a day later it was generally known in New York. Then broke such a storm of hatred and obloquy as perhaps never had been known before or has been known since. Those who a little while before had been applauding Jay to the echo, now

raved like maniacs against him. He was hanged and burned in effigy. In big white letters on Broadway, New York, appeared the legend: "Damn John Jay! Damn everyone that won't damn John Jay!! Damn everyone that won't put lights in his windows and sit up all night damning John Jay!!!" And it seemed as though the majority of New Yorkers escaped the curse by sitting up nights for that imprecatory purpose. A monster mass-meeting was summoned to give expression to public sentiment on the subject. To his great credit Hamilton challenged violence and death by attending it and attempting to speak in Jay's behalf. But the mob would not hear him. He was first howled down, then pelted almost to insensibility with brickbats and stones, and his life was saved only through his being carried away in the arms of his friends. Then the mob repaired to Jay's house, carrying the American and French flags, and before his door burned a copy of the treaty.

Through all this Jay remained calm, dignified, imperturbable, *integer vitae, scelerisque purus*; confident that time would vindicate not only the purity and patriotism but also the prudence and wisdom of his course. That treaty belongs to the history of the nation rather than to that of the State. But it is fitting here to record the sober judgment of the years that followed, that while the treaty had some regrettable faults, which Jay himself recognized, it was the best that it was then possible to make, it was on the whole immensely beneficial, and the negotiation of it was by no means the least, though it was the last, of John Jay's public services to the nation. Nor is it the least of the glories of

the Empire State that at this early period it was one of her native sons who thus marked a new era in international relationships. For we must remember that it was this treaty which first established the principle of the extradition of criminals and the principle that private debts or contracts between individuals should not be annulled by war.

The causes of this furious outbreak of brute wrath against Jay were several. One was the old animosity of Anti-Federalist against Federalist, of State rights against national sovereignty; an honest difference of opinion as to the constitutional relation between the States and the nation. Another was a legitimate objection to some features of the treaty and a lack of appreciation of its good qualities. A third was the unfounded fear that he would be a tool in Hamilton's hands for building up a powerful Federalist "machine" through official patronage. Another was resentment at his victory over Clinton, who was idolized by a multitude of followers. Another was the pro-Gallican and anti-Anglican mania which was unhappily prevalent at that time. Still another, and not the least potent of all, was a certain looking toward the coming Presidential election of the next year. Washington was certain to retire, and either Jay or Adams would be the Federalist candidate to succeed him. The opposition wanted Jefferson, and sought to discredit Jay as perhaps his most formidable opponent. Of course, while some of these motives were respectable and some not, they none of them, nor all united, could warrant the excesses of passion which were displayed.



At that period, and in fact ever since the latter part of Washington's first administration, the old Anti-Federalists had become consolidated into a national party organization called the Democratic-Republican party. Its followers were popularly known as "the Democracy"—but originally and for some time they preferred to call themselves "Republicans" on account of their strong sympathy with republican France. In the respects of general composition, principles, and continuity this new organization is historically associated with the Democratic party of later times. In our narrative it will be referred to as the Democracy or Democratic opposition during the period of its national minority in opposition to the Federalists, and as the Democratic party subsequently to that period.

The Nineteenth Legislature met in New York on January 5, 1796, a quorum being secured the next day and, as already stated, there being in each house a strong Federalist majority favorable to Jay. The opening address was comprehensive in scope and admirable in tone. Jay declared it to be his purpose to regard his fellow-citizens with equal eye; to cherish and advance merit, wherever found; to consider the national and State Constitutions and governments as being equally established by the will of the people; to respect and support the constituted authorities under each of them; and in general to exercise the powers vested in him with energy, impartiality, and prudence, an obligation of which he perceived and acknowledged the full force.

The address was rich in constructive statesmanship, and contained numerous suggestions which led to important improvements in the State government.

Thus he called attention to the dispute which had been raging over the status of the Governor in the Council of Appointment, and the urgent desirability of settling authoritatively whether the Governor, as president of that Council, had the sole initiative in making appointments. With a fine sense of propriety he refrained from making any expression of his personal opinion on the matter, but commended it to the careful consideration of the Assembly and requested a declaratory resolution concerning it. The Assembly, after much thought and discussion, decided that it would be inexpedient for it thus apparently to attempt to construe the Constitution. Perhaps it felt all the more reluctance to do so since Jay himself had been the author of that instrument. But a movement was then started which led directly to the Constitutional convention of 1801 and the adoption thereby of an amendment more satisfactorily defining the powers of the Council of Appointment.

Attention was called by Jay to the inadequacy of the salaries then paid to the Chancellor and the Justices of the Supreme Court, which permitted them to make no provision for their years of retirement after the constitutional limit of age had been reached, and he urged that some measure of relief be enacted. This was interpreted by the Assembly as a suggestion of judicial retiring pensions, and a committee of that house reported against such a system but in favor of whatever

increase of salary might be necessary to enable the Justices to make provision for themselves. This report was discussed at length and then laid aside without action, but in the ensuing Appropriation bill provision was made for a material increase of judicial salaries.

Another recommendation was that assistance be given to the Attorney-General, who because of the growth of the State was sorely overworked and was in fact unable properly to attend to the business of his office. In response the Legislature on February 12 enacted a law dividing the State into eight districts and creating an Assistant-Attorney-General for each of seven of them, the Attorney-General himself to serve in the eighth, which consisted of the city and county of New York. Later in the history of the State the system was changed so as to provide a District Attorney for each county.

Jay strongly renewed Clinton's recommendation of a revision of the criminal law so as to restrict the imposition of the death penalty and to make better provision for the care of prisoners. In consequence the Legislature on March 26 provided for the establishment of State prisons and abolished the death penalty save for treason, murder, and the sacrilege involved in robbing churches. It also abolished the practice of flogging as a punishment. Before that time men could be put to death for petty larceny, while not long before, until an enactment in 1778, it had been permissible to apply torture to compel a prisoner to plead to his indictment!

Having courageously remained at his post of duty during the yellow fever epidemic of 1795, Jay now urged action, which was promptly taken, for the better

protection of the State against pestilences. His recommendation for further promotion of canal navigation was also productive of prompt and favorable results.

At this session of the Legislature there was received from the Legislature of Virginia a draft of four proposed amendments to the Constitution of the United States, with the hope that New York would join in supporting them. These amendments provided for ratification by the House of Representatives of treaties affecting the powers of Congress or calling for Congressional action to fulfill their terms; for the provision of another tribunal than the Senate to try impeachments; for the reduction of the terms of office of Senators to three years, one-third to retire every year; and for making United States Judges ineligible to other offices. After much debate the Legislature voted that it was inexpedient to concur in these proposals.

Jay was an ardent advocate of the abolition of slavery, and greatly desired to urge in his address the enactment of a measure for the emancipation of slaves. After much consideration, however, and with much reluctance, he decided not to do so, for fear that the personal animosity which had arisen against him and which had not yet subsided would be reflected against the cause that he had at heart. He knew that some of the Democratic opposition were in favor of emancipation, but feared, probably with good cause, that they would not vote for it if he urged it. One of his friends in the Legislature, however, presumably through a private understanding with him, introduced a bill providing for gradual abolition of slavery. It was debated



at much length, and finally was narrowly beaten through the device of adopting a resolution to the effect that it would be unjust to deprive any citizen of his property without reasonable compensation to be paid to him by the State. This resolution met with a tie vote in the Assembly, and was carried by the casting vote of the chairman of the committee of the whole. Thereupon the subject was dropped for the remainder of the session.

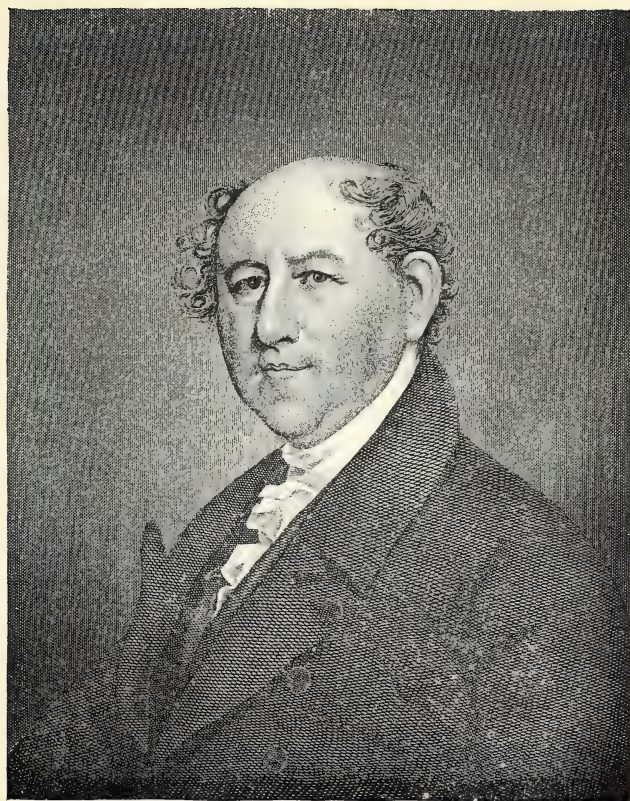
The census returns reported to the Legislature in January, 1796, showed 36,338 freeholders, and a total of 60,017 voters in the State. The increase of freeholders, who were electors for Senators, had been greatly promoted by the migration of substantial settlers from New England into the western part of New York. Now the Constitution fixed the number of Senators at 24, but provided for an increase of that number commensurately with the increase in the number of electors, until the total should reach one hundred Senators. Under that provision the census of 1796 called for the election of twenty additional Senators, or forty-four in all, of whom seventeen should be chosen from the Western district, which comprised Albany and all counties to the west of it. This increase of Senators was thereupon provided for, but in order to equalize the Senatorial representation from the districts, Albany and Saratoga counties were transferred from the Western to the Eastern district.

After an exceptionally busy and useful session the Legislature adjourned *sine die* on April 11, ordering,

however, a meeting of its successor on November 1, 1796, for the choice of Presidential Electors.

The election in April, 1796, resulted most favorably to the Federalists. The State was ashamed of its brutal outburst against Jay of the year before, and the admirable character of his administration caused a strong reaction of sentiment in his favor. This was promoted, too, by disgust at the conduct of the French government, and admiration of the attitude of Washington toward it. The Federalists were also greatly strengthened by the immigration from New England already mentioned, as a result of which the State Senate became almost unanimously Federalist.

The Twentieth Legislature met, according to the prescription of its predecessor, at New York on November 1, 1796, and Gulian Verplanck, of that city, was chosen Speaker of the Assembly. Jay's opening speech was chiefly devoted to a most eloquent and sympathetic commentary upon Washington's Farewell Address, which was then communicated to the Legislature and was recorded in full in the journal of each house. He announced that the city of New York had generously given Bedlow's Island to the State for quarantine purposes, in consequence of which the Legislature made further enactments for the protection of health. He called attention to the need of better management of the fiscal accounts of the State, and in response the Legislature on February 17, 1797, created the office of State Comptroller. His recommendation of further highway improvements led to the enactment of a general Highway law on March 21, 1797. He announced that Rufus



RUFUS KING

Rufus King, United States senator; born at Scarboro, Mass., March 24, 1755; lawyer; served in revolutionary war; member of Massachusetts legislature, 1782; delegate from Massachusetts to continental congress, 1784-87; United States senator from July 10, 1789 to May 18, 1796 when he resigned; minister to Great Britain, 1796-1803; defeated candidate for vice-president, 1804; again United States senator 1813-25; defeated for governor 1815 and for United States president in 1816; again minister to Great Britain, 1825-26; died in Jamaica, L. I., April 29, 1827.





King, United States Senator, had accepted appointment as Minister to England, and that a successor should therefore be chosen for his vacated seat; whereupon the Legislature elected John Lawrence, the local United States District Judge, a Federalist and a man of fine ability, a close friend of Washington, and Judge Advocate of the court that tried John Andre.

The choice of Presidential Electors was especially important because of the retirement of Washington and the vigorous fight which Jefferson was making to succeed him. Jay, who a year before had been regarded as a leading candidate of the Federalists, now eliminated himself and gave his influence in favor of John Adams, who was undoubtedly the choice of most of the Federalists in the eastern and middle States. Hamilton himself would have preferred Thomas Pinckney, of South Carolina, for President, with Adams continued in office as Vice-President, and he urged his friends to give those candidates an equal number of votes, presumably expecting—as was indeed the case—that Adams would be scratched by some southern Electors, and that thus Pinckney would become President and Adams Vice-President. But Pinckney was scratched by still more New England Electors, with the result that Adams headed the poll as President while Pinckney fell behind Jefferson, and the latter was chosen Vice-President. The New York Legislature chose, of course, twelve Federalists as Electors, and they voted solidly for Adams and Pinckney—or for Pinckney and Adams. The New York Anti-Federalists would have voted, had they been in power, for Jefferson for President and for

George Clinton for Vice-President. Clinton in fact received the four votes of Georgia, while Jay received four from Connecticut, and Aaron Burr received 13 from Pennsylvania, 6 from North Carolina, 4 from Kentucky, 3 each from Maryland and Tennessee, and one from Virginia, a total of 30, which placed him next to Jefferson among the Democratic opposition candidates.

The Legislature took a recess on November 11, and reassembled at Albany on January 3. There the Assembly chose a new Council of Appointment, all four members of which were Federalists. A law was enacted on March 11 making Albany the permanent capital of the State; providing for a building there for the use of the Secretary of State and the Clerk of the Supreme Court; requiring the State Treasurer and State Comptroller to maintain their offices there; and requiring the Legislature to meet there unless specially adjourned to some other place or specially convened elsewhere by the Governor.

Aaron Burr's term as United States Senator expired in 1797, and it was incumbent upon this Legislature to elect his successor. Of course there was no thought of reëlecting Burr in so strongly Federalist a Legislature. Instead the choice fell without hesitation upon Philip Schuyler, who had formerly been defeated by the smart trickery of Burr.

Some gains were made by the Democracy in the Congressional elections of December, 1796, when they elected four Representatives—in New York, Westchester, Suffolk, and Ulster counties,—and these were

followed by similar results in the spring elections of 1797. In New York City all their legislative candidates were elected by heavy majorities, among them being Aaron Burr, who thus changed a national for a State Senatorship, and DeWitt Clinton, son of James and nephew of George Clinton, who thus for the first time entered public office. DeWitt Clinton was a staunch member of the party of which his uncle was—or had been—the leader, though he accepted and supported the Constitution of the United States much more cordially than most other members of it, and vigorously resented the offensive conduct of the French government; so that many Federalists, including Hamilton himself, expected to see him some day affiliated with their party.

This twenty-first Legislature met at Albany on January 2, 1798, and Derrick Ten Eyck was chosen Speaker of the Assembly by a vote of 59 to 42, which probably pretty exactly represented the respective party strengths. The Governor confined his address to the State interests that seemed to require immediate attention of the Legislature, and scrupulously avoided anything that might have seemed to savor of party politics. The session was, however, marked with a number of exceptionally interesting transactions. The question was raised whether it was permissible for a member of the Legislature to hold at the same time another State office, Samuel Jones, a Senator, having been made Comptroller. A resolution was introduced into the Senate declaring that by acceptance of the latter office he had vacated his seat in the Senate, but after

much discussion it was rejected by a large majority, probably more because of unwillingness to dismiss from the Senate so eminent and useful a member as Mr. Jones than through belief in the propriety of dual office-holding.

At the beginning of the session a communication was received from Philip Schuyler, asking permission to resign his seat in the United States Senate, an interesting reminder of the punctilious sense of duty and of courtesy which at that time widely—though not universally—prevailed. Schuyler was at this time only sixty-five years old, but he had from early youth led a life of extraordinary exertion and achievement. He had been a highly efficient commander in two great wars; he had been a legislator for many years; he had been a pioneer in public works of unsurpassed difficulty and importance; he had been made the victim of monstrous public injustice and ingratitude; and his health was seriously impaired by his arduous and little-requited labors for the public good. Yet he could not retire from the cares and duties of office without asking and securing the permission of the authority that had appointed him to it.

The Legislature regretfully accorded Schuyler the privilege of resigning, and elected in his place John Sloss Hobart, who was at that time an Associate-Justice of the Supreme Court of the State; a man of fine scholarship, keen wit, high integrity, and patriotism, who accepted the appointment in a manner as exceptional as his predecessor's relinquishment of it. He wrote a letter to the Legislature setting forth that he



had not been "bred to the profession of the law," yet had been made a Justice of the Supreme Court at its organization and had held the place for twenty years, that his salary had been insufficient for the wants of his family, in consequence of which he had endeavored to eke out a competence by farming, but was unable to pay for the farm which he had purchased; and that he felt the Legislature of his own State "would not suffer an old servant to drink of the bitter cup of poverty and distress in the evening of his life." There was, unhappily, only too much cause for this piteous complaint, nor was Hobart the only faithful servant of the State who was denied adequate remuneration; and it is a melancholy fact to record that even this letter, and the strong appeal of the Governor hitherto mentioned, failed to move the Legislature to suitable action. There had been, indeed, provision made by the Nineteenth Legislature for the increase of judicial salaries, but it does not appear to have become sufficiently effective to save men like Hobart from real distress. After a man had served for many years on a salary insufficient to support his family in even the most modest style, a year or two of increase to a sum just sufficient for such support could neither discharge the deficits of the past nor provide for the impending period of retirement when even that poor stipend would cease.

Hobart was intellectually well fitted to fill a place in the Senate, perhaps better than that upon the bench. But three months after his appointment he resigned, driven to that course by pecuniary need. As his resignation was received after the adjournment of the Legis-

lature, Jay made an interim appointment, selecting as Hobart's successor General William North of Duanesburg, a gallant soldier who had served with distinction throughout the war from Quebec to Yorktown and had been the closest friend and aid of Steuben. North served for ten months, until the Legislature elected James Watson to his place—another competent if not brilliant Revolutionary officer and, like North, a stalwart Federalist. To anticipate the record it may be added here that Watson in turn resigned the Senatorship and was succeeded by the distinguished Gouverneur Morris.

When Hobart left the bench for the Senate, Chief-Justice Yates also retired because of expiration of his term. Like Hobart, he was doomed to poverty and died heavily burdened with debts, which the State permitted his family laboriously to discharge. These two vacancies led to a reorganization of the bench which marked a new era in the history of the court. John Lansing, Jr., a man of excellent ability and long experience, was made Chief-Justice. To the Associate-Justiceship Jay appointed a young man who had already made a great mark in the legal and also the political world, and who was destined soon to rank among the foremost jurists of the world in any land or age. This was James Kent, of whom nothing more need be said than the mention of his illustrious name. In August, 1798, John Codine was appointed as a fourth Associate-Justice; he died a few weeks later and was succeeded in December by Jacob Radcliff, one of the foremost chancery lawyers of his time.

During this session of the Legislature Robert McClellan was appointed State Treasurer; afterward he became a defaulter. The office of Secretary of State became vacant through the death of the incumbent, Mr. Scott, and over the filling of the place there arose a strenuous contest which was notable for the fact that it was one of the very rare occasions when Jay was in the wrong. Joseph White, a member of the Council of Appointment, urged the selection of Major Daniel Hale, of Albany, and prevailed upon his colleagues to support him. But Jay was for some unexplained reason strongly opposed to him and for a time refused to nominate him. Several other candidates were successively proposed by Jay, but the Council refused them all, at the same time insisting that the Governor, as president of the Council, must make the appointment. In the end Jay yielded and under protest named Hale, who was promptly confirmed by the Council. Hale proved to be an excellent officer, and Jay, with characteristic frankness and honor, soon wrote to both Hale and White his admission that he had been wrong in opposing the appointment.

The Legislature on April 3 passed the first law of New York forbidding the sale of intoxicating liquors on Sunday, and three days later it adjourned without day in the midst of a vigorous and animated political campaign.

Governor Jay's term of office was approaching its close. His administration had been notably pure, industrious, and useful. It had been marked with a finely conciliatory spirit in party politics, with a vast

amount of constructive legislation, and with a great advance and uplifting of the general standard of public service. It was distinctively the administration not only of one of the purest and most unselfish of patriots but also of one in whom the politician was lost in the very highest type of statesman. Never did any Governor more richly deserved undisputed reelection, and never was such a course more clearly prescribed by the public welfare. Yet such was not to be the case. He was opposed in the campaign by a candidate who was one of the few public men in the State worthy to be ranked with or near him in character and ability.

A largely attended meeting of the Federalist leaders from all parts of the State was held on March 6, 1798, at which it was unhesitatingly agreed to put forward both Jay and Van Rensselaer for reelection. A few days later Robert R. Livingston, Chancellor of the State, announced himself as an opposing candidate, and was thereupon made the standard-bearer of the party of the Democracy. This was a surprise to the State, and a particularly unpleasant surprise to Jay on personal grounds. Livingston was Mrs. Jay's cousin. The two men had been close life-long friends, law partners, and colleagues in Congress, in the organization of the State government, and in the ratification of the Federal Constitution. They had worked together for the defeat of Clinton at the Poughkeepsie Convention at which the Constitution was ratified. But, as we have already seen, Livingston was bitterly disappointed at being passed over in favor of Jay when the first Chief-Justice of the United States Supreme Court was named, and he



visited his resentment upon Jay himself as well as Hamilton. Jay's treaty with Great Britain gave him fresh opportunity for hostility. He raged against it in print; he joined Aaron Burr in denouncing it and denouncing Jay personally from the platform; he participated in the burning of the treaty before Jay's house, while his brother, Brockholst Livingston, joined in throwing brickbats at Hamilton and in burning John Jay in effigy. Now, in the midst of our undeclared war with France, and when the French government was acting in the most scandalous manner toward America, Livingston surpassed even Jefferson and Monroe in his pro-Gallican passion.

*Tantaene animis coelestibus irae?* For withal Livingston was the possessor of a well-nigh celestial mind. In intellectual versatility and opulence of power, in social graces and personal charm, in public and private dignity, in a certain spiritual exaltation that illumined his physical being with lustre, he was deservedly conspicuous even in an age in which were clustered many of the greatest men in American history. Nor was there one of loftier integrity or more efficient devotion to the public service. Yet because of the unworthy motives which we have defined, and particularly because of the two most unworthy—personal animosity, and partisanship for the alien land that was then our foe—he elected to oppose Jay's reëlection. We can imagine the sardonic humor with which George Clinton in his temporary retirement regarded this conflict between the two men who had inflicted upon him the first great defeat of his career!

Jay did not shrink from the contest. It was unspeakably painful to him to be opposed by one who for so long had stood so close to him, and on personal considerations he would gladly have retired. But on the ground of Americanism against Gallicism, of sustaining the American government against the obsession of the French frenzy, there could be no compromise and no retreat. "The indignities which France was heaping upon his country," says his son and biographer, "and the probability that they would soon lead to war, forbade him to consult his personal gratification." Moreover, Jay doubtless recognized in Livingston's candidacy a bid for the Presidency two years later, and while in most respects the Chancellor would have been a worthy Chief Magistrate, it would have been most ominous to elect to that office a man capable of permitting alien partisanship to influence his course in domestic affairs. To oppose Livingston, therefore, both as an actual candidate for the Governorship and as a prospective candidate for the Presidency, was Jay's plain duty.

Livingston was confident of success. The gains which the Democracy had made in legislative elections persuaded him that the tide was rising strongly in their favor. Aristocrat though he was himself, too, he counted upon a revolt of the people against the "court" that Washington had maintained at the capital and that Adams was continuing, and against the making of a treaty with monarchical England rather than with republican France. In this he was mistaken.

He did not realize the force of the patriotic sentiment that was rising throughout New York as elsewhere against the insulting aggressions of the French Directory. Even Adams's publication of the proofs of Talleyrand's attempt to blackmail the United States into paying him a bribe and France a tribute, under threat of ravaging our coast with French frigates, did not open the ambition-blinded eyes; nor did the national response to Pinckney's ringing "Millions for defense, but not a cent for tribute" penetrate his deafened ears.

The result was inevitable. Congress created a Navy department and ordered the building of a navy, the army was mobilized and Washington was recalled from his retirement to command it, "Hail, Columbia!" became the national war-song, and the whole nation rose in support of its rights and honor. In the midst of such doings, the New York election was held. Jay received 16,012 votes and Livingston 13,632. The disappointment to Livingston was intense and it embittered the remainder of his life, though there were still reserved for his achievement perhaps the greatest two public services of his useful and distinguished career, in the Louisiana Purchase and the development of steam navigation. But with his crushing defeat at the hands of Jay his influence in the politics and upon the destinies of New York was ended.

## CHAPTER IX

### JAY'S SECOND TERM

**I**T was inevitable that in 1798 national and international affairs should dominate all others. It was indeed appropriate that it should be so. In its relations with France the young republic was passing through the most crucial vicissitudes it had known since the Revolution. A state of war actually existed; there was ample provocation on the American side for a formal declaration of it; and the result of the Pinckney-Marshall-Gerry mission to France, in which the grossest of insults had been added to intolerable injury, made it seem certain that such a declaration would speedily ensue. One man alone prevented it, and he did so because he knew that in the then defenseless condition of the seaboard cities such a war, whatever its ultimate result, would at first be unspeakably disastrous to America. That was before Trafalgar. It was before the Nile. France had still a powerful navy, only a little surpassed by that of England, and with it she could have ravaged New York, Boston, Philadelphia, and the whole coast.

Adams was not for peace at any price. Indeed, that passionate patriot was the very antithesis of a pacifist. He would have gloried with avidity and zeal in taking up arms for the protection and vindication of American rights. But—like other members of his illustrious



family—if he had a heart of fire, he had a brain of ice. Nobody could be more irascible and impetuous; nobody could be at the same time more cool and calculating or exercise more inexorable self-control. Certainly nobody could be more unselfish and self-immolatory. So, at the conscious cost of his whole political future, the great President stood like a wall of adamant between his unready country and a disastrous war. In this he did not mollify his pro-Gallican enemies, who with astounding inconsistency continued to denounce him as pro-English, which was the very last thing John Adams could ever have been. On the other hand, he alienated a large faction of his own party, including Hamilton, who would have entered the war relying upon English aid. But Adams wisely distrusted any such reliance, knowing well that nothing could at that time suit England's book better than to have the United States suffer disaster and be severely checked in the marvelous progress which it was making toward domination of the western hemisphere.

In his noble course, which happily was successful for the nation though ruinous politically to himself, Adams was cordially supported by Jay, who was much more loyally attached to him than was Hamilton, and who indeed was in diplomacy and foreign relations generally a wiser counsellor and more prescient statesman than the latter. As New York, through her commerce, was suffering most from the misconduct of France, and because of her exposed and undefended condition would suffer most in case of open war, the crisis was of supreme interest in this State, and it was

natural and fitting that Jay, soon after his reëlection, should call the Legislature together in special session, partly to arouse and consolidate sentiment in support of the President, and partly to take specific measures of preparation for possible contingencies.

He accordingly, on July 2, 1798, issued a proclamation summoning the Twenty-second Legislature to meet at Albany on August 9—just a week after that crushing disaster of the Nile which made France far less inclined than she had been to push hostilities against America to the extreme. In his opening address he gave the threatening state of national relations with France as the reason for convoking the Legislature, and he dwelt briefly but with admirable clarity and discretion upon the existing situation and the train of events and negotiations that had led to it. The whole business, he said, belonged to the national government. Yet there was a question to what extent the safety and essential interests of the State of New York required auxiliary and correspondent measures to be taken on her part, and it was one which should be considered and answered by the Legislature rather than by the Governor. He urged no policy of his own, but asked the Legislature to consider carefully the need of defenses for the State's one great ocean port, the need of arsenals, and the need of revision of the Militia law. Much expense might be involved, but when security was at stake the expense of providing it was a secondary consideration.

To meet such expense, and indeed to pay the existing debts of the State, he earnestly advised a revision of the

tax laws which would compel all citizens to bear their just shares of the public burden. "Too many of our citizens," he said, "seem to have inadvertently flattered themselves that, unlike all other people past and present, they were to live exempt from taxes." Because of that error the State was in debt and was paying interest on loans which should not have been made, but should have been obviated by raising the money by taxation. He added the pertinent reflection that citizens ought not to object to taxation levied by the Legislature, since "all the officers of the government, and every member of the Legislature, must partake in its inconvenience." Jay himself was, it should be recalled, a very large taxpayer, and was thus advocating an increase of his own burden. The sequel to his wise counsel was the enactment, on April 1, 1799, of a general Tax law. Meanwhile, on August 27, 1798, the Legislature appropriated \$150,000 for the fortification of New York City, and \$165,000 for arsenals, arms, and military stores.

There was in Jay's admirable address nothing that could be regarded as partisan, unless in a single sentence of warning against partisanship. Referring to the imminent danger of war, he said: "The United States cannot be conquered but by civil discord under foreign direction; and it is useful to recollect that to this cause all fallen republics have owed their destruction." His utterances had in gratifying measure the effect for which they were designed. That was not to inflame passions against France, but to strengthen loyal support of the President; not to exacerbate partisan animosities, but to allay them and to unite all parties in that unity

which should prevail in respect to external relations. In consequence, no partisan strife arose in that session of the Legislature.

The only party division was over the election of a United States Senator to succeed General North, who had been appointed *ad interim* in place of Mr. Hobart, resigned. The Legislature elected James Watson by fifty-seven votes over John Tayler, who received forty-eight. These figures represented the respective strengths of the two parties in that Legislature. On August 27 an adjournment was voted to January 2, 1799. The meeting actually began on January 3.

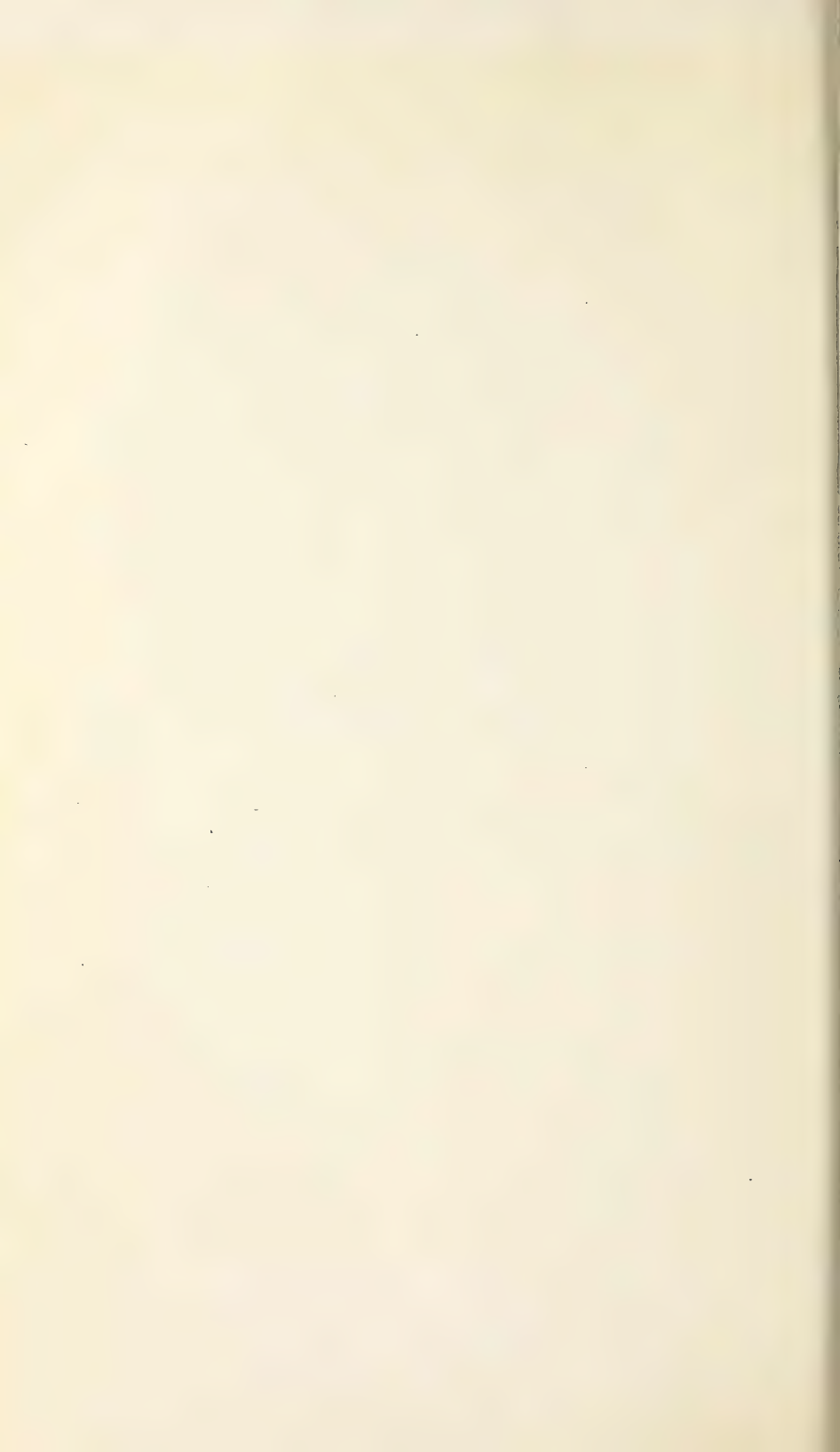
In this second meeting of the Twenty-second Legislature, the floodgates of partisanship were opened. First the Assembly elected a new Council of Appointment, consisting of three Federalists and one of the opposition, the last named being necessarily chosen because there was no Federalist Senator from the Southern district. Next a resolution was introduced for the division of the State into districts for the election of Presidential Electors and also into Senatorial districts from each of which one State Senator should be chosen—as at the present time. This was really a scheme of the Democracy, that party hoping thus in the Presidential contest of 1800 to secure some Electors from the districts in the southern part of the State, which they would have little chance of doing if all were chosen on a general State ticket. Despite the Federalist majority in the Assembly, the measure passed that house by a vote of 55 to 40, because of the action of a number of nominal Federalists who were much under the influence of





AARON BURR

Aaron Burr, U. S. senator; born in Newark, N. J., February 6, 1756; studied theology, but abandoned it for law; distinguished himself in many battles of the revolution; member of the legislature, 1784, 1798, 1800; attorney general, 1789-90; U. S. senator, 1791-97; president of state constitutional convention, 1801; tied Jefferson in presidential election of 1800; house of representatives declared Jefferson elected president and Burr vice-president; challenged and mortally wounded Alexander Hamilton in a duel at Weehawken, N. J., July 11, 1804; coroner's jury returned a verdict of murder; escaped to South Carolina; returned to Washington and completed term as vice-president; arrested and tried for treason in August, 1807 for attempting to form a republic in the southwest of which he was to be head, but was acquitted; went abroad in 1808; returned to New York City in 1812; died in Port Richmond, S. I., September 14, 1836.



Aaron Burr and were led by him on this and some other matters to desert their party. The measure was, however, rejected by the Senate.

The Governor reported to the Legislature certain amendments to the Federal Constitution which were proposed by the Legislature of Massachusetts, calculated to restrict the citizenship privileges of aliens. These were discussed at much length in the Assembly, on partisan lines, the Federalists favoring and the opposition disapproving them, and they were finally rejected by a vote of 38 for and 62 against them; this result being achieved, as was that on the districting proposal, through the influence of Burr, who was at this time a member of the Assembly and though nominally independent was in fact a leader of the Democracy.

Next came the great fight of the session. The Governor reported to the Legislature the famous Virginia and Kentucky resolutions, directed against the Alien and Sedition laws. There can be no question that those laws were extreme and were susceptible of intolerable abuse; though neither can there be any question that their purpose was laudable, for the suppression of treasonable intrigues which were threatening the integrity and life of the nation. On the other hand, the resolutions were no less extreme, and were calculated to impair the integrity of the national government. The Virginia resolutions, drafted by James Madison and adopted by the Virginia Legislature, denounced the laws as "palpable and alarming infractions of the Constitution"; a declaration which had its chief force in the fact that Madison had been, comparably with Ham-

ilton, a chief author of the Constitution and was therefore well qualified to interpret it, though in making this declaration he was probably much under the influence of Jefferson. The Kentucky resolutions, which were drafted by Jefferson himself, were still more radical, declaring the laws to be "not law, but altogether void and of no force."

In making that astounding declaration Jefferson overreached himself. Without it, some resolutions disapproving the Alien and Sedition laws might have passed the Legislatures of New York and other northern States. But Jefferson's dictum was flat nullification. More than that, it was palpably unreasonable for a State Legislature to sit in judgment upon an act of the national Congress. The leaders of the Democracy themselves afterward were most vehement in trying to deny the right and power of the Supreme Court of the United States to reject acts of Congress as unconstitutional. Certainly there was far more cause to deny such right and power to a State Legislature.

The debate at Albany over these resolutions was by far the greatest political battle that had thus far been waged in the New York Legislature. In the Assembly it was largely directed by Burr on the side of the Democracy, though the real protagonist was one of Burr's proteges, a younger but far abler man. This was Erastus Root, formerly of Connecticut. He was only twenty-six years old; he had formerly been chiefly known as a champion athlete; and in politics he had been regarded as an irresponsible *enfant terrible*. But in a day he placed himself in the very forefront of New



York political leaders as a tribune of the people and the spokesman of advanced democracy. In brilliancy of oratory and keen and cogent logic he far surpassed Burr, if not all of his colleagues at Albany. He contended with all the force of his magnetic and masterful personality for the right of the people, through their representatives in State Legislatures, to express their opinion of any act of Congress. In that he was doubtless right, and had that been the only point at issue he would probably have won the day and secured New York's approval of the resolutions. But that was not all. The resolutions contained Jefferson's declaration in favor of State nullification, at will, of acts of Congress, and though those specific clauses were in the course of the controversy stricken out, the spirit of them remained. This was something which Mr. Root did not venture to defend. He therefore altogether ignored it. Doubtless he did not himself approve it. At any rate, years afterward, when the same principle was again put forward in South Carolina by John C. Calhoun, he was one of the very foremost and most vehement in opposing and condemning it.

In the Senate the advocacy of the resolutions was led by Ambrose Spencer, a Senator from the Middle district, and thitherto one of the most zealous Federalists, who now deserted that party and cast in his lot with the Democracy. He was charged by his former associates with doing this through disappointment and resentment at not being appointed Comptroller of the State, a charge which he indignantly denied, declaring that he had announced his change of views long before

the appointment of Mr. Jones as Comptroller, and indeed before his own reëlection that year to the Senate. Nevertheless it was a matter of record that he criticized the appointment of Mr. Jones with undisguised personal bitterness, and moved for having his seat declared vacant in the Senate because of his acceptance of the Comptrollership. It must be remembered, too, that Spencer was related to Chancellor Livingston, and it is not unreasonable or unjust to assume that he was to some extent influenced by him in his political course. He was at that time only thirty-three years old, but had already served as an Assistant-Attorney-General of the State, a State Senator, and a member of the Council of Appointment, and had long been a close friend and adviser of both Jay and Hamilton.

The Federalists introduced into each house resolutions declaring that they could not perceive that the rights of the States had been violated by the Alien and Sedition laws, or that any unconstitutional powers had been assumed by the national government; expressing "anxiety and regret" at the "inflammatory and pernicious sentiments and doctrines" which were contained in the Virginia and Kentucky resolutions, "sentiments and doctrines no less repugnant to the Constitution of the United States and the principles of their Union than destructive to the Federal government and unjust to those whom the people have elected to administer it"; bearing "unequivocal testimony against such sentiments and doctrines"; and proclaiming it an indispensable duty to declare their incompetence, as a branch of the Legislature of the State, to supervise the acts of the

general government. These resolutions were adopted in the Assembly by a vote of fifty to forty-three, and in the Senate by a much larger majority, there being only seven votes against them.

It may be added that the Senate and Assembly adopted resolutions respecting the President's French policy instinct with fine patriotism, which evoked from Mr. Adams an appreciative and grateful response, in which he remarked that they were the more welcome to him because transmitted by a man for whom he had the warm and affectionate regard that he had for John Jay. Later, however, when Adams appointed Vans Murray to be Minister to France and thus renewed diplomatic relations with that country, the Assembly refused to adopt an address of thanks to him which was moved by Mr. Swartwout. This refusal was not at all to Jay's liking and was contrary to his judgment as a piece of political tactics, but it was dictated by Hamilton, who controlled a considerable following in the Legislature and who had decided to break entirely with Adams. After this strenuous political session the Legislature rejected a bill for the gradual abolition of slavery, and also one for the abolition of imprisonment for debt arising from contract; it passed a bill for "supplying the city of New York with pure and wholesome water," which was really a bill for chartering the Manhattan Banking Company, in the interest of Burr and his friends; and on April 3 it adjourned without day.

Later in that month occurred the annual election for members of the Assembly, in which, contrary to anticipation, the Federalists made marked gains. These were

especially noteworthy in New York City, which had for two years preceding been solidly for the opposition party, but now went Federalist by an overwhelming majority. This was not so much in spite of as because of the fact that Burr himself again headed the opposition ticket. The people had discovered the deceptive character of the water bill which Burr had manœvered through the Legislature under false pretenses. The majority of the Legislature and the public had supposed it to be what it purported to be, a measure for supplying the city with water. It did indeed provide for that, in a very inadequate fashion, but its real intent was to charter a bank which would not only enrich Burr and his friends but could also be used as a powerful political machine. The anger of the people at the exposure of this characteristic duplicity of Burr resulted in that trickster's crushing defeat at the polls. In Columbia county the Federalists also made gains, but elsewhere the drift was against them.

A wise and temperate use of the advantages thus gained might have assured to the Federalists a permanent, or at least a protracted, lease of power. This would doubtless have been the case had the counsels of Jay prevailed. But it was not to be. Various Federalist leaders and officials throughout the State, devoid of his judicial temperament, discerning vision, and conciliatory inclinations, ignored the obvious fact that the victory at the polls in April had been won not because of but in spite of the Alien and Sedition laws, and chiefly because of the exposure of Burr's duplicity and "graft," and interpreted the result as a popular ratifica-



tion of the laws in question and a mandate for their unrelenting application. Accordingly a campaign was begun which in some cases amounted to nothing short of oppressive persecution.

One of the most extreme cases was that of Jedediah Peck, Judge of Otsego county, a man of peculiar and in some respects insignificant personality, but of high integrity, benevolence, and public spirit. It was he who had moved for the abolition of imprisonment for contract debts, and he was also one of the most efficient advocates of the development of an adequate system of free public instruction. General John Armstrong had written an appeal to Congress for the repeal of the Alien and Sedition laws, couched in language which was bitter and even savage to an extreme degree. His authorship of it was kept secret, but the petition was widely circulated, ostensibly for the purpose of securing signatures to be presented to Congress, but of course really for the purpose of political propaganda. Its intemperate phrases were intended not for Congress, to which indeed they would have been more offensive than appealing, but for the general public, and especially for that part of the public that was most readily moved by passion. It was not an admirable document, but it was certainly not libelous or seditious in any reasonable sense.

Armstrong sent copies of this document to Judge Peck, and that gentleman distributed them to his neighbors for their perusal and signature. This came to the notice of Judge Cooper, of Cooperstown, who appears to have been endowed with a degree of the arbitrary

and contentious spirit that characterized his more famous son, the novelist. He brought the matter to the attention of the United States District Attorney, Mr. Harrison, and demanded that the rigors of the very law which he was flouting should immediately be visited upon Judge Peck. Whether through weak compliance with Judge Cooper's impassioned demand, or because of a kindred spirit of zeal against the Democracy, Mr. Harrison promptly adopted the course suggested. He laid the case before the Federal grand jury and demanded an indictment of Judge Peck under the Sedition law. This was granted, and a bench warrant was issued for the arrest of the culprit and his transportation to New York City for trial.

The circumstances of that ill-advised undertaking were doubtless much exaggerated by the Democratic press. We can scarcely believe that Judge Peck, a physically slight and non-belligerent man, was taken from his bed at midnight, manacled, and dragged from his home. But at least he was arrested by a United States Marshal, and was conveyed by him as a prisoner from Cooperstown to New York, a distance of two hundred miles. It took five days to make the journey, which might not unfittingly be described as the funeral procession of the Federalists. Scarcely anything could more have excited public opinion against the Sedition law and against the party that was regarded as responsible for it. The facts that there was actual sedition to be suppressed, that treasonable conspiracies existed, and that Armstrong's alleged "petition" was in very bad taste, were quite overlooked. The people saw

in Jedediah Peck a martyr to free speech, freedom of the press, and the right to petition. That exhibition, just before the spring election of 1800, was the most effective campaign propaganda that Burr could have wished.

The result of that election was a sweeping victory for the Democracy, in New York as elsewhere throughout the country. The city of New York, ignoring Burr's water bill job, turned its Federalist majority of nine hundred of the year before into a contrary majority of similar proportions. In the Eastern district alone were Federalist Senators elected, and the majority of that party in the Senate was reduced to seven, while the Democracy gained control of the Assembly by a majority of 28. The latter party also carried six of the ten Congressional districts. It is probable that the local victory in New York City was largely due to the personality of the candidates of the Democracy, who were practically all men of wealth and high standing and devoid of political offense. Burr himself discreetly kept off the ticket. In his place, the former Governor, George Clinton, was placed at the head of the list, thus assuring the support of the Clinton clan. Next came Brockholst Livingston, one of the ablest and most popular members of that family, to rally the Livingston clan to the fray. John Swartwout, the closest friend of Burr, was put upon the ticket in Orange county, to assure the support of all of Burr's partisans. General Horatio Gates was nominated, to cater to the former soldiers of the Revolution. Other candidates were Samuel Osgood, who had been Postmaster-General;

Henry Rutgers, and John Broome, who was afterward Lieutenant-Governor of the State. These candidates were chiefly selected by Burr himself, with the greatest discretion ever exercised by him in his career as a political "boss." The "slate" was arranged by Burr and Clinton personally at a secret conference in New York City only a week before the election.

Another incident which undoubtedly added to the discomfiture of the Federalists at the spring election of 1800 was the death of Washington, in December, 1799. So long as he lived his name was a tower of strength to the Federalists. Only Burr and a few lesser men ever ventured to asperse his character, motives, or sagacity. Even Jefferson, much as he disliked him and disagreed with him, was constrained to treat him with respect. And because of unwillingness to seem to oppose him, many refrained from the aggressive antagonism to the Federalist party which they otherwise would have manifested. But after his death that restraint was removed.

The importance of the spring campaign was recognized on both sides. Presidential Electors were to be chosen the following fall, and it was expected that the contest would be so close that the twelve votes of New York in the Electoral College would determine the choice of President. As the Electors in New York were then chosen by the Legislature, that party which won control of the Legislature in April would probably elect the next President of the United States. No wonder that Burr, who meant to be President, exercised all his extraordinary ingenuity in arranging the ticket and all



his plausibility in making public appeals to the people in those places where he had incurred least odium for his Manhattan Bank trickery. For the first time in New York he organized a political "machine," with ward and district managers, mass-meetings, personal canvassing of the lists of voters, and the other methods that have since been familiar in campaigns. In fact it may truly be said that "machine" methods in party management and in the conduct of electoral campaigns date, in New York State, and especially in New York City, from Burr's activities in the spring of 1800.

Nor was Hamilton less active, though in a different way. Unfitted for such work as that in which his great rival excelled, he addressed himself chiefly to the people in a series of campaign addresses which for eloquence, logic, and lofty political ideals have not been surpassed in any political contest in the State. He did not attempt to defend the Alien and Sedition laws, of which in fact he never approved. He was too good a lawyer to sanction the extreme prosecution of men for freedom or even for license of speech, and as an alien himself he was opposed to invidious discrimination against the foreign-born. He regarded with entire disfavor such proceedings as the prosecution of Judge Peck. "Let us not establish a tyranny," he wrote. "Let us not be cruel or violent." Nevertheless, it was impossible for him to escape a large measure of imputed though undeserved responsibility for those hated laws and the excesses that had been practiced under them.

Meantime the Twenty-third Legislature met at Albany on January 28, 1800, an act of its predecessor

on April 6, 1798, having fixed Albany as the place, and the last Tuesday of January as the date, of regular annual meetings. Jay made a notable address, referring with moving eloquence to the nation's loss in the death of Washington, and making many recommendations of constructive statesmanship of the highest utility. Conspicuous among these was one which must surely have been inspired, or at least strengthened, by remembrance of Burr's jobbery in the last days of the preceding Legislature, but which was certainly pertinent even then, and which might well have been urged upon every Legislature from that time to the present. That was, the desirability of giving public business precedence over private matters, and of considering important bills early in the session instead of leaving them to be rushed through without consideration at the close. "The small proportion," he said, "which our important public statutes bears to the numerous private ones passed for individual or for local and particular purposes, has become remarkable. Might not the claims of individuals be for the most part heard, examined, and ascertained in some mode more easy to them and less expensive to the State, than by the Legislature; and ought not business of great and general moment to precede that of less and limited importance? It has not infrequently happened that the earlier part of the session has been so far consumed in debates, and in preparing and passing acts respecting these lesser matters, that much interesting public business has been either too hastily dispatched toward the conclusion of the session, or been entirely relinquished and left unfinished. The

frequency of acts for private incorporations," he continued significantly, "and the difficulty of afterward restraining or correcting the evils resulting to the public from unforeseen defects in them, lead me to advert to the prudence of passing them only under such circumstances of previous publicity and deliberation as may be proper to guard against the effect of cursory and inaccurate views and impressions."

Renewed attention was called to the desirability of increased measures of military preparedness, and special recommendations were made for the maintenance of the common schools and for the promotion of higher education. The Common School law of 1795, which was to operate for five years, was renewed by the Assembly, but unfortunately the Senate refused to concur, and the school system was therefore permitted to lapse until 1812, when a general law was enacted. Union College, however, was assisted in March, 1800, with an appropriation of \$10,000 and a grant of public lands. The Governor recommended discontinuance of the system of "annual gratuitous allowances by the Legislature to the officers of the executive and judicial departments" as calculated to impair the constitutional independence of those branches of the government, and a bill making a temporary readjustment of judicial salaries was thereupon passed. The Council of Revision vetoed it because it provided for a mere temporary allowance in addition to the fixed salaries of the Chancellor and Judges, but it was repassed over the veto.

The Legislature reduced the salary of the Comptroller from \$3,000 to \$2,500, whereupon Samuel Jones

declined reappointment and was succeeded by John V. Henry, a member of the Assembly and an eminent lawyer. A strong effort was made by the Democratic members, under the lead of Jedediah Peck, to have the State divided into electoral districts, from each of which one Presidential Elector should be chosen. This was a renewal of the attempt that had been made by Burr in the preceding Legislature and defeated. John V. Henry voiced the Federalist opposition to it on constitutional grounds, insisting that as the Constitution of the United States said "Each State shall *appoint*" the Electors, it was necessary for the State to act in the matter as a corporate whole, through the Legislature, and not remit the matter to the people; also that each Elector must be appointed by the whole State, and not be elected by a mere district or part of the State. The proposal was rejected by a vote of 47 for it to 57 against it.

The resignation of James Watson as United States Senator was received, and another great name was added to the roll of New York's public servants by the election of Gouverneur Morris to succeed him, a choice of course particularly pleasing to Jay. The opposing candidate was Peter Gansevoort, of Albany, and the voting was on strict party lines.

The death of Washington moved the Legislature to commemorate the anniversary of his birth. The session was suspended on February 21, and was not resumed until February 24, while on February 22 an impressive public religious service was held.



Finally, on April 8, the Legislature adjourned without day, but with a provision that its successor should meet on the first Tuesday of November following, in special session, for the choice of Presidential Electors.

A month later the spring elections had been held, the Federalists were defeated, and it was obvious that the new Legislature at its meeting in November would choose supporters of the Democracy as Electors, and that this would give the Presidency of the United States to that party. Hamilton was furious and resorted to what we must regard as a most unworthy counsel of despair. The twenty-third Legislature had adjourned without day, but it was still legally in existence and could be reconvened by the Governor. It contained a safe Federalist majority. He urged, therefore, that it should at once be called together, as it could be at any time before July 1, and should pass the very proposal which it and also its Federalist predecessor had rejected, for dividing the State into electoral districts and having the Presidential Electors chosen from them by popular vote. He and his followers had opposed this before, when they felt sure of securing all the Electors through the Legislature, and the Democracy had favored it as their only chance for getting some of the Electors. Now conditions were about to be reversed. In consequence, Hamilton favored the districting plan, which would give the Federalists some of the Electors, whom they could not get through the Legislature, and the Democracy would doubtless have

opposed it as calculated to deny them the choice of all the Electors through the Legislature which they would control.

Never was there a more flagrant and cynical subversion of pretended principle to the exigencies of partisan advantage, and it is humiliating to recall that a statesman of Hamilton's genius condescended to attempt a trick which, as he frankly confessed to Jay, would transcend "the ordinary forms of delicacy and decorum." In brief, it would be legal, but it would be indecent. Hamilton was doubtless so possessed with distrust of Jefferson and loathing of Burr, and so convinced that their accession to power would be mischievous if not disastrous to the nation, that he reckoned even such sharp practice as this permissible.

But he reckoned without Jay. Such a performance was impossible to that chivalrous knight-errant of patriotism, *sans peur et sans reproche*. He refused. It has been said that he was insincere, or was governed by some unworthy motive; for which aspersion there can be no conceivable ground. Jay had already resolved to retire from public life at the end of his term as Governor, and therefore no political considerations had weight with him. Not even Washington was more devoted to the welfare of the country. Not even Hamilton was a more stalwart Federalist, or more profoundly disapproved the tendencies of the party of Jefferson and Burr. But Jay was endowed with a judicial temperament and above all with a prescience which Hamilton with all his surpassing genius never possessed, and with a scrupulous sense of honor sur-

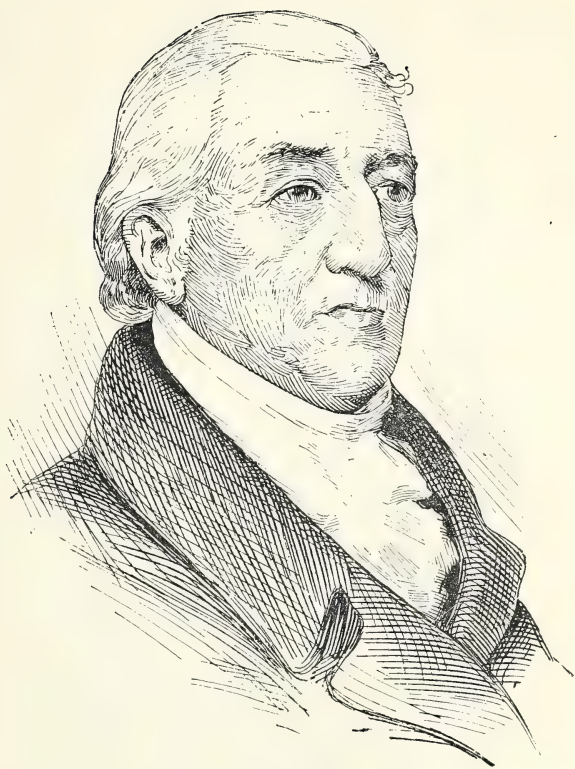


GOUVERNEUR MORRIS

Gouverneur Morris; born in Morrisania, Westchester county, January 31, 1752; lawyer; delegate to New York provincial congress, 1775; delegate to the continental congress, to fill vacancy caused by the resignation of his father, Lewis Morris, 1777-80; assistant minister of finance, 1781-85; member of the convention that framed the constitution of the United States, 1787; minister to France, 1792-94; United States senator, 1800-3; chairman Erie canal commission, 1810-13; died in Morrisania, N. Y., November 6, 1816.







HENRY RUTGERS

Henry Rutgers, jurist; born in New York City, October 7, 1745; served in the revolution; member of the legislature, 1777-78, 1784, 1800-1802, 1804-5, 1807-8; regent, 1802; presidential elector, 1808, 1816, 1820; president of electoral college, 1816, 1820; died in New York City, February 17, 1830.



passed by that of no man in American history. He could not do a wrong act even in hope that good might come of it; and he had faith to believe that America would survive any temporary change of political control that might occur. So he refused Hamilton's desperate plea, endorsing upon his letter the noble words: "This is a measure for party purposes, which I think it would not become me to adopt."

By the side of the theft of the Governorship in 1792, of which Clinton was the avid beneficiary; by the side of the proposal of Hamilton, of which we have just spoken; by the side of the habitual practices of Burr, which were countenanced by even the best men of his party; by the side of the personal pique and tergiversation of Chancellor Livingston; beside the unscrupulous manipulation of the Council of Appointment some years later, which Governor Tompkins approved—by the side of these things, in splendid contrast, this momentous decision of Jay's deserves everlasting remembrance. He knew, as he made it, what the result would be; and he had the triumphant faith to believe that, whatever regrettable result might come of it, the ultimate result of a righteous deed could not be otherwise than right.

It is not necessary here to enter into the tortuous tale of political intrigue in which both Hamilton and Burr were implicated during that crucial summer and fall of 1800, further, at any rate, than it directly concerns New York. Hamilton, after his failure to induce Jay to call a special session of the expiring Legislature, contented himself with publishing, late in October and

just before the Presidential Electors were to be chosen, a most unjust and regrettable attack upon President Adams as unfitted by temperament and talents to be President, declaring his course during his term to have been "a heterogeneous mass of right and wrong." It was at this time practically certain that Adams would not be reëlected. Had it not been certain, this extraordinary course of Hamilton's would have made it so, as it did add immeasurably to the demoralization of the already moribund Federalist party.

But if Hamilton was unjust and unfaithful to Adams, far more treacherous was Burr to Jefferson. As soon as the result of the New York spring election was known, and it seemed certain that the Democracy would win the Presidency, a Congressional caucus of that party was held at Philadelphia, at which it was unanimously agreed that Jefferson should be President and that the Vice-President should be from New York, presumably George Clinton, Robert R. Livingston, or Aaron Burr. Albert Gallatin was authorized to communicate with the New York leaders and ascertain their views and preferences as to the choice. He did so through his friend Commodore Nicholson, who forthwith discreetly but diligently canvassed the field. He first considered Chancellor Livingston, and found that his physical infirmity of deafness was regarded as an insuperable barrier to his choice. A deaf Vice-President could not preside over the Senate. Next he conferred with George Clinton, who at first peremptorily declined the nomination on the grounds of age (he was only sixty-one), failing health, and the needs of



his family. After some discussion and earnest urgings by Commodore Nicholson, however, Clinton consented to be a candidate if his candidacy should be essential to a victory for the Democracy and if it was understood that after election he would be at liberty to resign if his health and circumstances made it desirable. There can be little doubt that in this Clinton was quite sincere; though neither can it be doubted that, had his circumstances been more favorable, he would have eagerly desired the nomination, not only to gratify his own ambition but also to defeat Burr, whom by this time he thoroughly distrusted and regarded as not identified with the best welfare of the public.

Commodore Nicholson accordingly decided to report to the Philadelphia caucus in favor of Clinton's nomination, and there is reason to believe that he actually wrote a letter to that effect. But to complete his commission he felt it incumbent upon him to call on Burr. What passed between them has never been disclosed, or what other influences may have been brought to bear upon Nicholson by the friends of Burr. The result, however, is of record. Nicholson, after urging and prevailing upon Clinton to accept the nomination, recommended to the caucus the nomination of Burr, which was accordingly made. Clinton had ample cause to resent this as a slight and treachery to him. But whatever he may have felt he was too discreet and dignified to betray his feelings. He gave to the ticket, Jefferson and Burr, loyal and effective support.

We need not here enter into the details of the intrigues and devious manipulations through which Burr strove to betray Jefferson and get himself elected to the Presidency. As he and Jefferson had each received the same number of Electoral votes, it devolved upon the House of Representatives to decide which should be President and which Vice-President. That vote of the House was to be by States, and of the sixteen States the delegations of eight were Democratic, six Federalist, and two equally divided; and a majority, to wit, nine, was necessary for a choice. Burr sought to get the Federalist Representatives of New Jersey to vote for him. He also got William P. Van Ness, of New York, then his closest friend and a politician of great shrewdness and influence, to write to Edward Livingston, a Representative from New York, that it was the sense of the Democracy of this State that after a few votes in the House Jefferson should be dropped and Burr elected President. It is possible that these schemes would have been successful had Burr been more open and courageous in his candidacy. But he elected to pretend aloofness and indifference, and to involve himself in an air of mystery; to practise the equivocation and deceit and treachery that were indeed an inseparable part of his perverted nature; with the result that he not only failed to gain the prize which he desired, but also brought upon himself ruinous reproach and upon others a reflection of the same odium.

To complete this portion of the narrative it may be added that after the contest between Jefferson and Burr

was thrown into Congress, and the House during dozens of ineffective ballots was the scene of riotous and almost revolutionary demonstrations, Hamilton rose again to the height of his great statesmanship and atoned, so far as possible, for his discreditable proposal to Jay for a special session of the Legislature. He had sufficient influence in the House of Representatives to throw the balance of power in favor of either of the two candidates. They were both his enemies, and he distrusted both and considered both dangerous to the integrity of the young republic. The choice between them was a choice between two evils. If Jefferson were chosen President, there could be nothing but antagonism between him and Hamilton, and Hamilton would have no part in the administration. If Burr were chosen, on the other hand, any compromise or bargain would be possible, for Burr would have been quite capable of putting Hamilton at the head of his cabinet if he had conceived it to be to his political advantage to do so. There is a reason for suspecting that Burr actually sought a compact with Hamilton, under which Hamilton would have assured Burr's election, Burr would have made Hamilton the chief of his cabinet, and the two would have organized a new party out of parts of both the Federalists and the Democracy. To all such considerations, however, Hamilton was adamant. Recognizing, despite his dislike and distrust of him, Jefferson to be both intellectually and morally the immeasurable superior of Burr, he gave his influence successfully for his election. Thus he saved the republic from the ruin which Burr's election would have

brought upon it; and thus he caused an exacerbation of Burr's enmity which a little later led to his own death at the hand of that assassin.

Meantime, on November 4, 1800, the Twenty-fourth Legislature met at Albany, pursuant to the action of its predecessor, for the purpose of choosing Presidential Electors. The Governor in his opening address referred briefly but most pointedly and judiciously to the Presidential contest and to the intensity of political feeling. "It is natural," he said, "that the election of a first magistrate for the nation should divide even patriots into parties; while not intemperate, few public inconveniences result from them. But history informs us that when such parties being nearly balanced become highly inflamed, they often endanger not only the tranquillity but also the political existence of republics. It is wise to profit by the experience of others."

Continuing his wise endeavors at constructive legislation, Jay made a number of important recommendations, which were acted upon by the Legislature. Among them were elaborate recommendations for legislation concerning wills, bequests, and the general disposition of estates, resulting in the passage of a general act on February 20, 1801; for reform of the act relating to the incorporation of religious organizations, including a suggestion that the salaries of ministers be made, under the law of contracts, a personal charge against the members of the church corporations, which



led to an enactment on March 27, 1801, but without that salary contract provision; and for radical reforms in the tax system, which were effected by an act of April 8, 1801.

As the chief author of the State Constitution, it was with the best of grace and with peculiar authority that Jay recommended the calling of a popular convention for the amendment of that instrument; not, however, generally, but "for the sole and exclusive purpose of ordaining what shall be the number of Senators and Representatives at future periods, and of fixing the limits which it shall at no time hereafter exceed." There was obvious need of such regulation of the size of the Legislature, and an act in accordance with Jay's recommendation was passed on April 6, 1801; but it also empowered the convention which was to be called to determine the true construction of the article of the Constitution relating to the powers of the Council of Appointment, which had been so greatly in dispute. The convention could not strictly be called or ordered by the Legislature, however, since the Constitution itself, strangely enough, contained no provision for any such action or for its own amendment. The action of the Legislature took, therefore, the technical form of a recommendation to the people of the State that they create such a convention, to meet at Albany on the second Tuesday of October in the next year; which, as we shall hereafter see, was done.

After hearing the Governor's address, the Legislature proceeded to the choice of Presidential Electors. In the Senate, Federalists were nominated by a vote of

24 to 18. In the Assembly, of which Samuel Osgood had been chosen Speaker, Democrats were nominated by a vote of 64 to 39. On joint ballot, of course, the latter were elected. Next arose the question of electing a new Council of Appointment. The existing Council was Federalist, but the Assembly was Democratic and wanted to have a new Council of that party. The Federalists objected to an election at that time, on the ground that the existing Council had not yet served out its full year's term. Precisely the same issue had arisen before, in 1794, when the Federalists insisted upon turning out a Council before its term had expired and electing a new one, and the Democratic opposition objected to it; but in 1800 each party took exactly the opposite position from that which it had held in 1794! The Democracy had the votes and exercised the power, and elected a new Council, consisting of DeWitt Clinton, Ambrose Spencer, and Robert Roseboom, Democrats, and John Sanders, Federalist. However, the old Council insisted upon continuing to act, and actually did so; on January 23, 1801, it appointed Solomon Van Rensselaer to be Adjutant-General in place of Colonel Van Horne, whose health forbade him longer to serve.

The resignation of John Lawrence as United States Senator was received, and John Armstrong was elected by an almost unanimous vote to succeed him. This unanimity was due, apparently, to three causes. One was Armstrong's relation through marriage with the Livingstons, which gave him their support and the support of Democracy generally. The second was the fact that down to a couple of years before he had

been a strong Federalist, and still commanded the personal friendship and attachment of the members of that party. The third was his supposed fitness for the place as a comprehensive student of national affairs and a political writer of exceptional power. It must be added, however, that his participation in New York State politics was so slight as to be negligible, and that the estimate of his abilities much exaggerated.

This meeting of the Legislature lasted only five days, from November 4 to November 8. The only important business transacted was the choice of Electors, the election of a Senator, and the election of a new Council of Appointment—which did not exercise its functions, in fact, for more than three months, the call for a Constitutional convention not being issued until the next meeting, in April. Brief as it was, however, it was marked with exceptional partisan activity. The Assembly's reply to the Governor's address was full of factional spirit and indulged in some pretty direct innuendoes at the Governor himself, which Jay ignored. Just before adjournment the Democratic members held a caucus and agreed upon George Clinton as the party candidate for Governor at the next spring's election, largely because of resentment at Burr's betrayal of him in the Vice-Presidential campaign, and also because of the rising influence of his brilliant nephew, DeWitt Clinton, who had become a member of the State Senate and of the Council of Appointment. A little later Jeremiah Van Rensselaer was nominated for Lieutenant-Governor.

At the same hour the Federalist members of the Legislature also held a caucus, which adopted resolutions strongly approving Jay's administration and earnestly urging him to be a candidate for another term. But Jay, who in his note of thanks to the Senate for its response to his address had that very day foreshadowed his retirement from public life, replied with a positive declination. He deeply and gratefully appreciated their motives and their friendship, but he had years before resolved that at this time in his life he would retire from public employment. Accordingly at a later date Stephen Van Rensselaer was nominated for Governor and James Watson for Lieutenant-Governor.



## CHAPTER X

### THE SPOILS SYSTEM

**I**T was the irony of fate that the close of Jay's administration should be marked and marred by an acrimonious controversy over the interpretation of the Constitution which he himself had drafted, and by the triumph of a principle that was peculiarly distasteful and indeed detestable to him. Jay was a partisan, no doubt, in the same sense that Washington was. He was strongly devoted to certain principles and policies of government; the more strongly because his policies and practices were invariably based upon principle, instead of his principles being determined by considerations of policy. But he was the last man to make any mere political shibboleth the test of public service, or to make office the spoils of victory at the polls. Yet before his administration ended he was compelled to witness the establishment of a spoils system in the government of New York which for many years surpassed in sordid despotism any similar regime in any other State of the American Union, and which had its origin in that very Council of Appointment that he had devised as a barrier against such practices.

Reference has already been made to the several controversies which had arisen concerning the powers of the Council. The chief question at issue was whether the Governor had the sole privilege of nomination and

the Council merely the power of confirmation or rejection, or all members of the Council had equal right with the Governor of nomination. Unfortunately, this had, by all but Jay himself, been regarded not as a question of constitutional principle but as one of temporary party expediency, each of the two parties taking each of the two sides of it in turn, for the sheer sake of political advantage. At the regular session of the Twenty-fourth Legislature, in the early part of 1801, Jay deemed it desirable, as it certainly was, that the question should be authoritatively and permanently decided. Accordingly on February 26 he addressed a message to the Assembly—that body being vested with the power of electing the Council of Appointment,—repeating his former recommendation that such a decision be sought.

With admirable modesty he refrained from any attempt to impose his own interpretation of the Constitution upon the Assembly, despite his obvious authority as the author of that instrument. He observed that defects and obscurities had been found in the Constitution of New York, as in the Constitutions of most other States, and that it was desirable that these should be corrected. When he became Governor it had been his official duty to form as correct a judgment as he could concerning the interpretation of the article in dispute, and after much deliberation he had become fixed in the opinion that it vested the right of nomination exclusively in the Governor. He had found, on conferring with his predecessor in the Governorship, that he also had held that view and had always claimed that right

and had never yielded or conceded it to the Council. Nevertheless, as members of a former Council had adopted a different construction of that article, and as it was evidently a question on which upright and judicious men might differ, he had in his first address to the Legislature suggested the advisability of its making a declaratory act upon the subject. This the Legislature had not done. There had therefore been nothing for him to do but to continue the course upon which he had deliberately decided, and which his predecessor had invariably pursued.

This course had, however, led to difficulties. Two days before, on February 24, the Council had negatived his appointments of a number of Sheriffs, though it had confirmed certain other appointments. On one nomination three members of the Council had refused to vote at all, and then one of those members had himself, in controversion of the Governor's right, made a nomination for the office under consideration. Judging it prudent to consider maturely what ought to be his conduct in such circumstances, the Governor thereupon had adjourned the Council. (It may be added that he never again called it together.) He was not, he told the Assembly, surprised that the Council should claim, as indeed it had formerly done, concurrent right and power of nomination; but that a majority of its members should refuse to vote at all upon a nomination of the Governor, and then, while that nomination remained thus not disposed of, should nominate another person for the same office, appeared to him "not a little extraordinary." Many appointments exceedingly inter-

esting to the public needed soon to be made, but while the majority of the Council persisted in the course which it had adopted, it would be impossible for the Governor to make them. He was convinced that he could not concede to the members of the Council the powers which some of them claimed without violating his oath to administer the government to the best of his knowledge in conformity with the powers delegated to him by the Constitution. Therefore he submitted to the Assembly consideration of the question whether it had not become indispensable that the merits of these opposite and interfering claims to the right of nomination should be ascertained and decided without delay.

At the same time Jay addressed a similar statement of facts to the Chancellor and Justices of the Supreme Court, requesting their opinions, which they unanimously declined to give on the ground that such expression of opinion was not within the scope of their judicial duties.

The Assembly on the following day adopted a resolution declaring it to be its sense that it had no authority to interpose between the Governor and the Council of Appointment, or to pass a determining act concerning the powers of the Council. A few days later the Assembly refused to concur in a resolution of the Senate calling for the appointment of a joint committee of the two houses to investigate, consider, and report upon the matter, "with their opinion of a fit and proper mode of determining the constitutional question."

The next step was taken by the Council itself, or by the three members in opposition to the Governor. These



were Robert Roseboom, Ambrose Spencer, and DeWitt Clinton, the last named being the dominant member. They addressed a communication to the Assembly, representing that there were numerous appointive offices needing to be filled; that the interests of the State would suffer if they were not filled; that the Governor had not called the Council together for the purpose of filling them; and that therefore they, the three members of the Council, felt it incumbent upon them to explain the reasons for their conduct. There followed a long and detailed account of the controversies between these three members and the Governor at the late meetings of the Council, in which the attempt was made to show, and indeed the explicit charge was made, that the Governor had been trying to "play politics" by filling offices with his own partisans regardless of fitness. This was supplemented with a still longer and more elaborate legal argument against the Governor's exclusive right of nomination, and urging that that power was "exclusively entrusted to the Council," the Governor having nothing to say excepting to cast the deciding vote in case of a tie in the Council. It was pointed out that while the former Governor, Clinton, had always insisted upon his sole right to make nominations, the former Councils had never conceded to him that right or relinquished their claim to the concurrent right; and that indeed in one case, that of the appointment of Justice Benson, the Council had successfully asserted that right, in which Governor Clinton had perforce acquiesced. It was a "fighting document" from beginning to end, containing many acrimonious

aspersions upon the Governor, and it is impossible to escape the belief that it was intended by DeWitt Clinton, who was doubtless its chief author, not so much for the Assembly as for the public at large. It was, in brief, a campaign document for use in the electoral campaign of that spring.

The Legislature on April 6 adopted what was probably on the whole the best possible course. Jay had already suggested that it should recommend to the State the holding of a Constitutional convention to deal solely with the matter of legislative apportionment. It did adopt such a recommendatory resolution, but it also included as a subject upon which the convention should act the interpretation of the twenty-third article of the Constitution relating to the powers of the Council of Appointment. Then the Senate adopted a resolution declaring it to be the sense of the Legislature that the Council, as a matter of expediency, should waive its demands for concurrent power of nomination, so that the business of the State could be resumed in an orderly fashion. This resolution the Assembly refused to accept, doubtless at the suggestion of DeWitt Clinton. That aggressive leader not only opposed this resolution, but also sought to have the Senate adopt in its place one drafted by himself, suggesting the possible need of invoking the power of impeachment against the Governor, and declaring that for the Legislature to attempt to prejudice a case which might thus come before it in its judicial capacity as a court of impeachment would be grossly improper.



ALBERT GALLATIN

Albert Gallatin, secretary of the treasury; born in Geneva, Switzerland, January 29, 1761; emigrated to Boston, Mass., 1780; served in revolutionary army; member of Pennsylvania constitutional convention, 1789; member of state legislature, 1790-92; elected United States senator, but was refused seat upon the grounds that he had not been long enough a citizen of the United States; congressman, 1795-1801; appointed secretary of the treasury by President Jefferson, January 26, 1802; reappointed by President Madison, and served until February 9, 1814, when he was appointed a commissioner to negotiate the Treaty of Ghent, which was signed December 24, 1814; appointed United States minister to France by President Madison in 1815, and served until 1823; minister plenipotentiary to Great Britain from May 10, 1826 until October 24, 1827; died at Astoria, L. I., August 12, 1849.





This astounding resolution was rejected by the Senate, whereupon DeWitt Clinton introduced another, calling upon the Governor to convene the Council and "so to accommodate with them respecting the right of nomination as to prevent a further interruption of appointments until a constitutional decision can be had on that question." This also was rejected by the Senate. Finally, on April 8 the Assembly adopted a long resolution, referring to the Governor's failure to convene the Council and the consequent embarrassment of public business; declaring that responsibility for this state of affairs must rest upon either the Governor or the Council, and that the Assembly might have to resort to impeachment proceedings "against the delinquent or delinquents"; resenting the passage and transmission to the Assembly by the Senate of two resolutions "having a tendency to produce an interference in the said controversy"; and declaring that the Assembly persisted in its former resolution denying the right of the Legislature to interpose between the Governor and the Council or to pass a declaratory act concerning the powers of the Council.

That same day the Legislature adjourned and the matter was left for popular decision at the polls in the impending elections, both for Governor and Legislature, and for members of the Constitutional convention. The result was what might have been and indeed was generally expected. Jefferson had become President of the United States, and his party, which we may now and hereafter call the Democratic party, was almost everywhere in the ascendant. New England

indeed still remained largely Federalist, but not even the large influx of New England settlers could hold New York for that party. George Clinton was elected Governor by 24,808 votes against 20,843 cast for the "great patroon," Stephen Van Rensselaer, and a strong Democratic majority to support him was returned to the Legislature. The Constitutional convention, which was to meet at Albany on October 13, and for which an election was held on August 27, was also chiefly of that complexion. It will be fitting at this point to review briefly the work of that convention before proceeding with the more general narrative of the State's history.

The two commanding figures in the convention were rivals for the leadership of the Democratic party, Aaron Burr and DeWitt Clinton—bitter and unrelenting personal foes. William P. Van Ness, the friend and agent of Burr, was also a conspicuous member; as was Smith Thompson, afterward a Justice of the Supreme Court of the United States. Daniel D. Tompkins, afterward Governor of New York, made his first appearance in public life as a delegate from New York county to this convention. The chief Federalist was the veteran John V. Henry, who came from Albany county. Aaron Burr was unanimously elected president of the convention, through three motives. One was, that he was Vice-President of the United States and therefore of higher official standing than any other member of the convention. The second was, on the part of his friends, that he should have the honor and influence of the place in order to promote his political

interests. The third, on the part of his opponents, was that in the chair he would have less influence than as a leader on the floor. This last consideration prevailed with DeWitt Clinton, who thereupon constituted himself leader of the convention.

The first question considered by the convention was that of legislative apportionment. In this no partisan issue was involved, and a plan proposed by DeWitt Clinton was adopted with little discussion and with practically no opposition. Then arose the question of the powers of the Council of Appointment, and on this there was almost equal unanimity of opinion. Seeing that this was a partisan question, this unanimity might at first blush seem surprising. But we must remember that each party had at some time committed itself to each side of it, and that it was practically not so much a question of principle as of policy and temporary advantage. The Federalists had insisted upon the concurrent right of the Council to nominate when, in 1794, they had forced the nomination of Egbert Benson as Justice of the Supreme Court upon the reluctant Governor Clinton, and the Democrats had done the same in their fight with Governor Jay in the early part of 1801.

A resolution was introduced declaring that the Constitution was to be so construed as to give the members of the Council concurrent right and power of nomination with the Governor. Against this proposition there was only one important speaker. That was John V. Henry, of Albany, the Federalist leader, who made in support of the Governor's exclusive right of

nomination the most thoughtful address in the convention. There was no man in the convention whose character, experience, purity of motives, and unselfish devotion to the public welfare more entitled him to a hearing and controlling influence. But Mr. Henry had shortly before been made a victim of the spoils system. He had been removed from the office of State Comptroller for no other reason than that he was a Federalist and a Democrat wanted the place and its salary. On this account he was regarded in the convention as a "sorehead" who was animated by personal grievance. The imputation was entirely unfounded and unjust, but it served to lessen the force of his arguments. Two other prominent members sided with Mr. Henry. One was Burr's henchman, William P. Van Ness, who contented himself with voting against the pending resolution, and in so doing probably reflected Burr's wishes. The other was Daniel D. Tompkins, who not only voted but also spoke against it, a fact which in after years was a source of sincere and legitimate pride to him when the pernicious results of that resolution had become apparent. But Mr. Tompkins was at that time only twenty-six years old and had never before been in public life, and his words had little weight.

The resolution interpreting the Constitution in favor of the Council of Appointment and against the Governor was favored by DeWitt Clinton, who both spoke and voted for it, and it was adopted with only fourteen negative votes. Thus was effected perhaps the most pernicious act thus far, if not for all time, in the history of the State. It was pernicious in a dual sense. There



can now be no doubt that it was a misinterpretation of the Constitution. We know, of course, that it was exactly contrary to the intent of the author of the Constitution, and that it was contrary to the understanding of the foremost men among those who adopted the Constitution. It was also contrary to reason, precedent, and logic. But it was something still worse and far worse than that. The undisguised purpose of those who proposed and adopted it was not merely to give the nominating power to the Council, but also and especially to do so in order to establish the spoils system and to give any temporary party majority in the Assembly power to create a Council that would make a "clean sweep" of the offices in its favor.

That this was the purpose of the politicians then in power had indeed been made plain by what had been happening during the summer, in the interval between the accession of the new State government and the meeting of the convention. At the beginning of July George Clinton had become Governor once more. There had then been no meeting of the Council of Appointment since February 24, when the deadlock had occurred between Governor Jay and the three Democratic members. Entirely apart from the issues involved in that controversy, there was much need that the Council should resume its action. Accordingly Governor Clinton took early occasion to call it together, and its first meeting under his administration was held at Albany on August 8, 1801. There was no reason to suppose that the Governor himself intended or desired the results that followed. He had formerly been Gov-

error for eighteen years, and had been a decidedly self-assertive and autocratic Governor. Yet it does not appear that ever in so much as a single case had he removed or assented to the removal of a faithful and competent public officer on political grounds. Men had been removed, but they had been removed for adequate cause, of which due notice had been given them, and they had always had opportunity to defend themselves and to vindicate themselves, if they could, in hearings before the Council. In brief, an enlightened course had been pursued, in which efficient public service and not the rewarding of political activity or the building up of a partisan "machine" had been the aim.

But a new spirit had now entered the political life of the State and of the nation. We must not denounce Jefferson as a spoilsman. On the contrary, he more than once or twice expressed himself vigorously and effectively against the spoils system. Yet even he in some noteworthy cases made changes in public office for political reasons, and thus set an example which, while legitimate in itself, encouraged and incited others to go to far greater extremes. To say, as Jefferson practically did, that the principal offices should be filled by men belonging to the majority party, and that the minor offices should be divided between the two parties in proportion to their strength at the polls, sounds plausible and equitable. But its fatal evil was that it gave recognition to the claims of partisanship in the public service and made it inevitable that under its operation there would be after every election a number

of changes for purely political reasons. Practiced by the most conservative and moderate men, such a system could scarcely avoid abuse. In the hands of politicians more ambitious than scrupulous, it was certain to lead to scandalous debauchery of the civil service.

The foremost protagonist of the new system was DeWitt Clinton; still a young man—he was only thirty-two when he became the first political “boss” of New York,—of transcendent ability, of boundless ambition, of indomitable resolution, of an aggressiveness verging upon sheer pugnacity; happily of high integrity; after the retirement of Jay and the assassination of Hamilton probably the ablest man in the public life of New York. He had been foremost in the controversy with Governor Jay, as the Democratic leader of the Senate and the Council of Appointment, and with the reëlection of his uncle as Governor, with a Democratic majority in each house of the Legislature, he saw his opportunity of becoming the leader and dictator—for with him leadership meant dictatorship—of the Democratic party of the State. That his ambitions were for the sake of his uncle, or that his uncle was privy to them, or indeed approved them, does not appear. As already noted, Governor Clinton had never made removals from office for political reasons, and there is no proof that he had changed his mind or his policy. But he was beginning to suffer the infirmities of advancing years and was unable to resist, even though he wished it, the impetuous zeal of his aggressive young kinsman. In consequence, during this seventh term of his Governorship, not George Clinton himself but DeWitt Clinton was the commanding figure in the

State. He had only two possible rivals. One was Robert R. Livingston, and the other was Aaron Burr. But the former was temperamentally and through physical infirmity unfitted for leadership, while the latter's notorious lack of personal integrity had already largely forfeited public confidence. To make assurance of his mastery over both of them doubly sure, however, DeWitt Clinton promptly manœvered an alliance between the Clinton and Livingston clans against Burr, thus finally and utterly disposing of him, and then secured for the three Livingstons distinguished occupations which would remove them from active political leadership in New York. Robert R. Livingston accepted from Jefferson the appointment as Minister to France which he would not accept from Washington, and in that place did his greatest work for America and for the world. Edward Livingston became United States District Attorney and Mayor of New York City until the rascality of a subordinate brought him so near to ruin that he was fain to remove to Louisiana, where he did a work in legal codification that entitles his name to immortality. Brockholst Livingston became, a few years later, a Justice of the Supreme Court of New York. It may be added, as a reminder of the place which the Livingston clan then filled in public life, that John Armstrong, United States Senator, was a brother-in-law of Robert R. and Edward Livingston; Morgan Lewis, who became Chief-Justice of the Supreme Court of New York, was another brother-in-law; and Thomas Tillotson, Secretary of State of New York, was a third brother-in-law.



The Council of Appointment at this time consisted, as hitherto recorded, of DeWitt Clinton, Ambrose Spencer, Robert Roseboom, and John Sanders. The last-named was a Federalist, and therefore was a negligible factor. Mr. Roseboom was the eldest of all, but while a man of integrity and sincere devotion to the public service he had no family influence, was non-aggressive in spirit, and was of mediocre intellectual ability. He was essentially a loyal follower rather than a leader. Mr. Spencer was a little older than Clinton, and was a lawyer of distinction, but he lacked the political ambition, acumen, and aggressiveness of his younger colleague, with whom, however, he worked in complete harmony. Thus DeWitt Clinton became the unquestioned leader of the Council of Appointment, and that, under the interpretation of that body's constitutional powers which he insisted upon and which in time was formally made by the Constitutional convention, meant that he was the master and dispenser of the political patronage of the State.

At the first meeting of the Council of Appointment in this administration, on August 8, the first thing done was the appointment of two of the men whom Governor Jay had refused to appoint and over DeWitt Clinton's demand for the appointment of whom the breach between the Governor and the Council had occurred. These were John Blake, Sheriff of Orange county, and Peter Vrooman, Sheriff of Schoharie county. There seems to have been no objection to these appointments. But the next one, made at the same meeting, did give much offense. Sylvanus Miller, of Ulster county, was

DeWitt Clinton's most obedient servant. He greatly desired to remove to New York City if he could get a lucrative office there, and Clinton also desired him there because of the greater political influence which he could exert in that larger place. So Clinton had the Council appoint him Surrogate of New York county. Now, Mr. Miller was well fitted for the place by ability and character, and his personal and social qualities were such that he soon became a prime favorite in New York, so that the city was glad to have him serve as Surrogate for many years. But there was much resentment at first at the appointment of a "rank outsider"—what in after years was called a "carpetbagger"—to an office which many residents of the city were quite competent to fill. In this case no harm was done, but an example was set which in later years proved mischievous.

There was still further criticism of the action of the Council at this time in removing two eminently capable and highly honored men from office to make places on purely political grounds for two less competent men. Daniel Hale was removed from the office of Secretary of State, and his place was filled by Thomas Tillotson, whose claim to it lay entirely in the fact that he was a brother-in-law of Robert R. Livingston. John V. Henry, one of the ablest and most generally esteemed men in public life in the State, was removed from the Comptrollership to make room for Elisha Jenkins, an entirely respectable but far less competent man, who had, however, the advantage of being the very obedient and politically useful servant of Mr. Spencer. Nor could it be alleged that the Council was making such

changes in only the chief offices whose occupants, it might be argued, should be in political accord with the head of the government. The same process was extended to a number of minor places, such as Master in Chancery and County Judge, in which the political predilections of the incumbents could be of not the slightest consequence. Such applications of the spoils system were revolting to Governor Clinton, who protested against the appointments, insisted upon his protest being entered upon the minutes of the Council, and in at least one case refused to sign the minutes because they did not sufficiently set forth his opposition to some changes in office.

Worse followed. At the next meeting of the Council, three days later, the "clean sweep" was continued. Cadwallader D. Colden was dismissed from the office of District Attorney to make room for Richard Riker, a henchman of Clinton's and his second in the Swartwout duel; and Richard Harrison was similarly dismissed from the Recordership of New York in favor of John B. Prevost; in both cases the changes being made for purely partisan reasons, and the new men being obviously less fit than their distinguished predecessors. Robert Benson, Clerk of the City of New York, was sacrificed for the sake of Teunis Wortman, a man of ability but of doubtful character, and William Coleman was removed as Clerk of the Circuit Court to make a place for John McKisson, a friend of Mr. Spencer's—whereupon, it is of interest to recall, Alexander Hamilton made Mr. Coleman editor of the *New York Evening Post*, which he at that time founded. All over

the State the "clean sweep" extended. County Clerks, Sheriffs, and other officers were turned out solely because they were Federalists in favor of Democrats and personal friends and relatives of the members of the Council of Appointment. There is no exaggeration in the strenuous declaration of Henry Adams in his "History of the United States," that DeWitt Clinton and Ambrose Spencer "swept the Federalists out of every office even down to that of auctioneer, and without regard to appearances, even against the protests of the Governor, installed their own friends and family connections in power. . . . DeWitt Clinton was hardly less responsible than Burr himself for lowering the standard of New York politics, and indirectly that of the nation."

It would be unjust, however, to let this entirely correct estimate pass without averting the possibility of misinterpretation. It would be monstrous to write "*arcades ambo*" against the names of DeWitt Clinton and Aaron Burr. The characters and motives of the two were as far apart as the poles. Both were politically and personally ambitious. But the one was politically and personally honest, and the other was politically and personally dishonest. Greater difference than that could not exist. Clinton exercised far greater and more prolonged influence in New York politics than Burr, and was responsible for a far more extensive application of the spoils system. Still, we must remember that there is, after all, a radical distinction between spoils and corruption, and that distinction is the measure of the contrast between the two men. DeWitt Clinton aimed



to fill all the offices with his political friends, but he wanted them filled honestly and efficiently. Burr cared less about the political complexion of office-holders than about their subserviency to his sordid and corrupt schemes. Democrat though he professed to be, he always preferred a dishonest Federalist to an honest Democrat. Clinton was even more than Burr responsible for the introduction of the system of partisan spoils; but Burr was supremely responsible for the bipartisan system of political knavery, such as reached its fruition two generations later in the Tweed Ring.

We can almost forgive Clinton for his proscription of Federalist office-holders because of the deathblow which he thus gave to Burr. He and Spencer did not withhold their hands in that epochal summer of 1801 until every Federalist had been turned out of office with the solitary exception of Josiah Ogden Hoffman, the Attorney-General of the State, and he was permitted to remain a little longer not because of his eminent virtues and talents but because Spencer wanted the place for himself but was not quite ready to take it. On the other hand, of the hundreds of new men appointed to office there was not one who was known to be a partisan or a friend of Burr's. Some men of high character and approved ability were passed by for men of less competence, simply because they were or were suspected to be friendly to the Vice-President. "No man," wrote Burr's henchman, Van Ness, "however virtuous, however unspotted his life or his fame, could be advanced to the most unimportant appointment unless he would abandon all intercourse with Mr. Burr, vow opposition

to his elevation, and pledge his personal services to traduce his character." This was no doubt an exaggeration, but at least it was required of all appointees that they should be passively if not actively opposed to Burr.

Nor was DeWitt Clinton content with excluding Burr's friends from new appointments to office. He struck direct blows at Burr in the places which he already held. Hardest of all was the compelling of Burr and his friend John Swartwout to resign from the directorate of that Manhattan Bank which Burr had corruptly organized under the guise of a water supply for New York. That was a body blow at Burr in his chief stronghold of political and pecuniary power, and from it he never recovered. It exasperated him so as to provoke him to the madness which culminated in his assassination of Hamilton and thus ended his political career in New York. Finding all local appointments thus barred against his friends, Burr turned to the man against whom he had treacherously intrigued, and besought the President to name United States officers in New York of his selection, to-wit, a Marshal, Collector, Supervisor, and Naval Officer. Jefferson complied so far as to appoint John Swartwout to be Marshal. Then Clinton intervened, Jefferson summarily rejected all the rest of Burr's candidates, and thereupon Burr began his open hostility to Jefferson.

At this time, too, there arose a spirit of violence in public controversy which has probably never been surpassed anywhere or at any time. One of the earliest examples was given by Ambrose Spencer in his reply to the protest of Ebenezer Foote, a former Senator and

a man of high character and standing, against his summary removal from the Clerkship of Delaware county. "It was," said Mr. Spencer, "an act of justice to the public, inasmuch as in removing you the veriest hypocrite and most malignant villain in the State was deprived of the power of perpetrating mischief." This, however, was a mild beginning. A little later, in 1802 and 1803, came the famous controversy between DeWitt Clinton through his cousin, James Cheetham, and Aaron Burr through his *fidus Achates*, William P. Van Ness. Clinton was the owner of a newspaper, the *American Citizen and Watchtower*, of which Cheetham, a naturalized Englishman, was editor. In that paper, and in volumes entitled "A Narrative," "A View of the Political Conduct of Aaron Burr," and "Letters on the Subject of Burr's Defection," he persistently arraigned, attacked, and excoriated Burr with a copious citation of facts and dates, persons and places, and illimitable bitterness of sarcasm and denunciation. Cheetham was a master of that sort of political controversy and was doubtless the actual writer, but the inspiration and the animus were of course DeWitt Clinton's. "All the world," says Henry Adams, "knew that not Cheetham, but DeWitt Clinton, thus dragged the Vice-President from his chair"; though it is not so certain that entire justice is done in what follows, that "Not Burr's vices but his influence made his crimes heinous." Such a judgment implies a moral insensibility which we should regret to impute to Clinton and his associates, even amid their utmost frenzy of partisan animosity.

The replies of Van Ness, in defense of Burr, were anonymous. Everybody knew the authorship of Cheetham's writings, but not until years afterward did it become known that the letters of "Aristides" in the public press were written by William P. Van Ness. It must be confessed that in literary style Van Ness was more than a match for Cheetham. In fact, the world's literature of acrimonious political controversy contains few more brilliant productions than some of the "Aristides" letters. In convincing power, however, Van Ness fell far short of Cheetham, because instead of presenting facts he simply indulged in epithets. That, it is true, was not his fault so much as his misfortune. He had the wrong side of the case. The facts were on the other side. He had therefore to follow the rule, "When you have no case, abuse the opposing attorney!" In doing that he ran the whole gamut of vilification until, like Vivien, he left

"Not even Lancelot brave, nor Galahad clean."

Chancellor Livingston, said "Aristides," was "a capricious, visionary theorist" whose "frivolous mind revolted" at all "important and laborious pursuits"—a strangely inept characterization of a man who did so much at the very zenith of his career in such "important and laborious pursuits" as the promotion of steam navigation and the fertilization of agricultural lands. Tillotson, Livingston's brother-in-law, was "a contemptible, shuffling apothecary, without ingenuity, or spirit to pursue any systematic plan of iniquity." Riker, the close friend of DeWitt Clinton, was "an imbecile





EDWARD LIVINGSTON

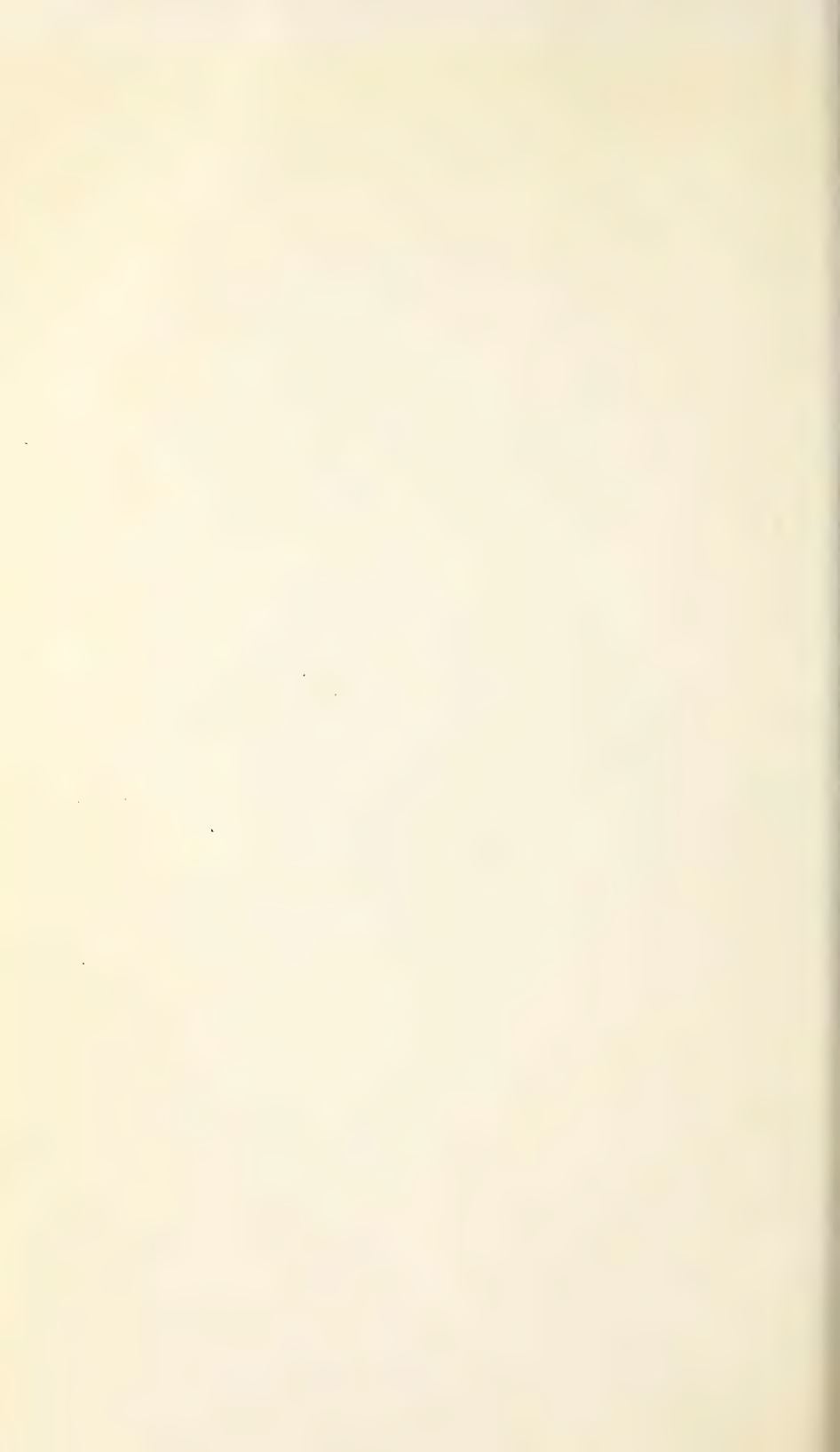
Edward Livingston; born Livingston Manor, N. Y., May 26, 1764; lawyer; member of congress, 1795-1801 and 1823-29; United States district attorney, 1801-3; mayor of New York City, 1801-3; removed to Louisiana, 1804; served in the battle of New Orleans under General Jackson; member Louisiana state legislature, 1820; elected to congress and to the United States senate, 1829-31; resigned May 24, 1831 to become secretary of state; minister plenipotentiary to France, 1833-35; died in Barrytown, Dutchess county, N. Y., May 23, 1836.





JOHN LANSING, JR.

John Lansing, Jr., chancellor; born in Albany, N. Y., January 30, 1754; lawyer; secretary to Gen. Philip Schuyler, 1776-77; delegate to continental congress, 1784-85; delegate to state convention to ratify federal constitution, 1788; member of assembly, 1780-89; justice supreme court of New York, 1790-98; chief justice, 1798-1801; chancellor, 1801-14; unanimously nominated by Anti-Federalists for governor of New York in 1804 but declined; mysteriously disappeared after leaving his hotel to post a letter at one of the docks of New York City, December 12, 1829.





and obsequious pettifogger, a vain and contemptible little pest." McKisson, the friend of Spencer, was "an execrable compound of every species of vice." Ambrose Spencer himself was "a man as notoriously infamous as the legitimate offspring of treachery and fraud can possibly be." Samuel Osgood, formerly United States Postmaster-General, was "a born hypocrite," who "propagated falsehood for the purpose of slander and imposition." Governor George Clinton himself had "dwindled into the mere instrument of an ambitious relative."

These, however, were mere "*ballons d'essai*." It was when he got at work upon DeWitt Clinton himself that "Aristides" Van Ness rose to the full height—or descended to the full depth—of vituperative malediction. Clinton was "formed for mischief, inflated with vanity, cruel by nature." He was "an object of derision and disgust." He was "an adept in moral turpitude, skilled in all the combinations of treachery and fraud, with a mind matured by the practice of iniquity, and unalloyed with any principle of virtue." With audacious irony "Aristides" declared that if it were not "disgraceful to political controversy" he would "develop the dark and gloomy disorders of his malignant bosom, and trace each convulsive vibration of his wicked heart"; but, refraining for very shame from saying what he might have said, he contented himself with pillorying Clinton as one of those "who, though destitute of sound understandings, are still rendered dangerous to society by the intrinsic baseness of character that engenders hatred to everything good and

valuable in the world; who with barbarous malignity view the prevalence of moral principles and the extension of benevolent designs; who, foes to virtue, seek the subversion of every valuable institution, and meditate the introduction of wild and furious disorders among the supporters of public virtue." He had cultivated "intimacy with men who have long since disowned all regard to decency and have become the daring advocates of every species of atrocity." He had formed an "indissoluble connection with those who by their lives have become finished examples of profligacy and corruption," and who "have sworn enmity, severe and eternal, to the altar of our religion and the prosperity of our government." Of course these things "must infallibly exclude him from the confidence of reputable men." Finally, Clinton was—the reference was, of course, to his intimacy with Cheetham—"the constant associate of a man whose name has become synonymous with vice, a dissolute and fearless assassin of private character, of domestic comfort, and of social happiness; the bosom friend and supporter of the profligate and abandoned libertine, who, from the vulgar debauches of night, hastens again to the invasion of private property; who, through the robbery of the public revenue and the violation of private seals, hurries down the precipice of deep and desperate villainy."

If now we smile weariedly at these extravagances, and wonder that they did not instantly condemn their author to fatal ridicule, we must remember—what is indeed suggested by Van Ness's pen name, "Aristides"—that the United States, and especially New York, had

then fallen under the spell of a certain neo-classicism. The towns of the State were being named Rome and Athens and Syracuse and Homer and Ovid, and every public building, if not indeed every private house above the rank of the merest cottage, must be modeled after a Greek or Roman temple. It was only natural, therefore, for Van Ness to take for his model Cicero's orations against Catiline and Verres, and it was only natural for the public generally to take his extravagant diatribes in all seriousness.

While in fluency of railing and copiousness of vilification Van Ness surpassed Cheetham, the moral victory was never in doubt on Clinton's side. Burr's private and public turpitude was by this time too well known to permit the rehabilitation of his character by mere unsupported lampooning of other men. But high words led to high passions, and these to personal conflicts. Those were unhappily still the days of the "field of honor." When Swartwout declared that DeWitt Clinton's opposition to Burr was based upon unworthy and selfish motives, Clinton replied that Swartwout was "a liar, a scoundrel, and a villain." Swartwout demanded a retraction, which Clinton refused, and a duel followed on the notorious duelling ground at Weehawken, New Jersey. Three shots were exchanged without effect; Clinton's fourth and fifth wounded Swartwout in the leg; Swartwout continued to demand a retraction, but Clinton declined to give it or to fight further, and left the field expressing a wish that he could have Swartwout's principal there—meaning, of course, Burr. Clinton afterward said that it was a silly

affair, that he ought to have declined Swartwout's challenge and himself have challenged Burr. Another duel followed between Clinton's second, Riker, and Swartwout's younger brother, Robert Swartwout, in which the former was badly wounded. A third resulted fatally. Coleman, in the *Evening Post*, printed a bitter quatrain :

"Lie on, Duane, lie on for pay,  
And Cheetham, lie thou too ;  
More against Truth you cannot say  
Than Truth can say 'gainst you."

Duane, editor of the notorious *Aurora*, the savage lampooner and vilifier of Washington, appears to have paid no attention to it, but Cheetham took it up and a challenge followed. Before the meeting, however, Cheetham weakened and compromised the matter. Thereupon Thompson, the Harbor Master of New York, a partisan of Clinton's, took up the quarrel. Coleman challenged him, and they met at the close of a winter day at what is now the foot of West Twenty-first Street, New York. After two ineffective shots they came closer together in the growing darkness, and at the next shot Thompson fell mortally wounded.

To complete the record of the eventful year 1801 it remains to be recalled that in the closing hours of his administration President Adams appointed Egbert Benson to be a Circuit Judge of the United States, whereupon the latter of course resigned his place on the Supreme bench of New York. Then Robert R. Livingston resigned the Chancellorship, because of advancing age, and John Lansing, Jr., Chief-Justice of the



Supreme Court, was appointed to succeed him. These changes made two vacancies in the Supreme Court, beside which there was felt to be need of another Justice. No appointments were made for several months, and the Federalists charged that DeWitt Clinton and Ambrose Spencer were planning to have themselves appointed to the places. This was certainly untrue concerning Clinton, though it is probable that Spencer had ambition to ascend the bench, as indeed he afterward did. But before the end of the year Morgan Lewis was appointed Chief-Justice, and Brockholst Livingston and Smith Thompson were made Associate-Justices—all admirable men, and all members of the Livingston clan.

## CHAPTER XI

### THE SUPREME TRAGEDY

**G**EORGE CLINTON was Governor again, DeWitt Clinton was the political dictator of the State, and the Clinton-Livingston alliance was all-powerful. For a time, as we have seen, the personal conflict between DeWitt Clinton and Burr dominated attention. But it was destined, with all other State issues, to yield place to a greater strife, of national scope, involving the man who was, far more than the younger Clinton, the antagonist of Burr and the obstacle in the way of his dark and devious machinations. Hamilton had of course retired from public life at Washington with the accession of Jefferson, and had no thought of seeking State office in New York. But he was still the dominant figure in that remnant of the Federalist party which, however impotent in national politics, was still strong in several of the States, and which was capable of exercising much influence with a balance of power between the factions into which the Democratic party was divided. From the moment when the rising power of DeWitt Clinton doomed Burr to defeat in New York, there began a train of incidents that led straight to the greatest tragedy thus far in American history.

At first all seemed serene. The Twenty-fifth Legislature met at Albany on January 26, 1802, and listened to Governor Clinton's address, perhaps the most states-

manlike that he had ever delivered. It was a thoughtful presentation and discussion of the chief interests of the State, with various wise recommendations and without a trace of partisanship. There was in it no reflection of the storm which was raging in the politics of the State; no hint of the greater storm which was inevitably gathering. Of like character were the numerous communications which the Governor addressed to the Legislature during the session. Not one was controversial.

The proceedings of the Legislature likewise were devoid of partisan contention. Thomas Storm, a New York City Democrat, was chosen Speaker of the Assembly, and one of the first acts of that body was to elect a new Council of Appointment in place of that which under DeWitt Clinton's lead had waged so strenuous a campaign for spoils. Four entirely new men were chosen: Benjamin Hunting from the Southern district, James W. Wilkin from the Middle, Edward Savage from the Eastern, and Lemuel Chipman from the Western. It was a Democratic body, and it appointed none but Democrats to office, though the "clean sweep" of its predecessor had been so thorough that there were few remaining Federalists to be replaced. The most conspicuous change in office was the practically enforced resignation of Josiah Ogden Hoffman, Federalist, as Attorney-General, and the appointment of Ambrose Spencer in his place. This change, as hitherto intimated, had long been in contemplation. But Mr. Spencer had been a member of the former Council of Appointment, and did not deem it fitting that he should

seek or accept such elevation at the hands of a body of which he was himself a member, especially since there had recently been some discussion of a proposed—though never adopted—rule prohibiting appointment by the Council of one of its own members to office. Accordingly there had been an understanding that Mr. Hoffman should be permitted to retain his office until a new Council should be chosen of which Mr. Spencer would not be a member; when Mr. Hoffman would “resign” and Mr. Spencer would be appointed in his place. On the same day when this appointment was made, William Stewart, a brother-in-law of the Governor, was restored to the office of District Attorney for Tioga, Ontario, and other counties, from which he had been removed by the Federalist Council during Jay’s administration.

The extraordinary habit which United States Senators from New York seemed to have, of resigning their seats, was continued in February, 1802, when the resignation of John Armstrong was reported to the Legislature by Governor Clinton. Mr. Armstrong had formerly been a Federalist, but had left that party with the Livingstons, to whom he was related. In his place the Legislature elected DeWitt Clinton, who had only just reached the age required by the Constitution for a Senator of the United States. This added fuel to the fire of animosity between Clinton and Burr, the latter accusing the former of having intrigued against Armstrong to compel his resignation, and of having secured the appointment of Dr. Tillotson, a member of the Livingston family, as Secretary of State, on the condi-



tion that Armstrong would resign. For these charges there was, of course, not the slightest ground. It was inconceivable that Armstrong would lend himself or submit himself to any such scheme, while of course it was the most natural thing in the world that, if Armstrong resigned for any cause, DeWitt Clinton should be chosen to succeed him.

The other transactions of the Legislature were chiefly of a routine and non-contentious character, well calculated to promote the general welfare of the rapidly growing commonwealth, and the session was adjourned without day on April 2. The spring elections followed, in which every Senator chosen was a Democrat and a large majority of the Assemblymen were of the same party. There followed the Clinton-Burr, or Cheetham-Van Ness, controversy and the other incidents already related, the net result of which was more and more to exclude Burr from the councils of the Democratic party. Nearly all of the Democrats chosen to the Legislature in April, 1802, were hostile to Burr, and in the late fall of that year practically the entire Democratic press of the State, under the lead of the then very influential Albany *Register*, was aligned against him.

The Twenty-sixth Legislature met at Albany on January 25, 1803. Thomas Storm was reëlected Speaker of the Assembly, and Mr. Van Ingen, a Federalist, was dropped from the Clerkship of that house, which he had long filled, and was succeeded by Solomon Southwick, a brilliant and aggressive young Democrat, who was the brother-in-law of Mr. Barber, the editor of the Albany *Register*; a circumstance which gave

Burr's friends a chance to say that his election to the Clerkship was in payment for the *Register's* opposition to Burr, an entirely unfounded charge. The Governor in his address referred to the ominous controversy with Spain over the navigation of the Mississippi River, dwelt upon the desirability of self-reliant military preparedness, urged improvement of navigation of the Hudson River, and emphasized the need of a general and permanent system of common schools for popular education such as had not yet been provided. As before, his address was free from partisanship and controversy.

The term of Gouverneur Morris in the United States Senate was to expire on March 4, and early in the session the duty of electing his successor was taken in hand. No Federalist could hope to be chosen, and therefore the competition was confined to the Democratic party. The chief aspirants were General Theodorus Bailey, of Dutchess county, and John Woodworth, of Rensselaer county, who was afterward Attorney-General and a Justice of the Supreme Court. At the party caucus Mr. Woodworth won the nomination by 45 votes to General Bailey's 30. Thereupon Matthias B. Talmadge, a Senator, who was Bailey's brother-in-law, bolted the caucus nomination and persuaded a number of Senators and Assemblymen, chiefly from the southern part of the State, to follow him. Despite this defection, on the next day, February 1, Mr. Woodworth was nominated in the Assembly, receiving 53 votes to 19 for General Bailey and 18 for Gouverneur Morris, whom of course the Federalists wished to reelect. In the Senate the Federalists,

realizing that Morris's reelection was impossible, under the lead of Abraham Van Vechten joined the bolting Democrats and voted solidly for General Bailey, with the result that he received the Senate's nomination. The two houses then met for joint ballot; the Federalists in both Senate and Assembly voted for General Bailey, together with Mr. Talmadge's bolting Democrats, and he was thus elected by 59 votes to Woodworth's 57.

During this session there occurred the great scandal of the defalcation of the State Treasurer, Mr. McClanan, in the sum of more than \$33,000. He had been heavily in debt when he was appointed to the office, and some of his creditors were believed to have urged his appointment in the expectation that thus he would be enabled to satisfy their claims, which he in fact did by paying them with State funds. The Legislature thereupon appointed as his successor Abraham G. Lansing, brother of the Chancellor, John Lansing, a man of wealth, integrity, and fine business abilities. It also enacted that the Treasurer should thereafter keep the State funds in the Bank of Albany, in which he should have no private account of his own, and should permit the Comptroller of the State to examine his bank book at least once a month. In case any irregularities were detected, they were to be reported to the Governor, who should immediately suspend the Treasurer from his functions and cause them to devolve upon the officers of the Bank of Albany.

A law was enacted on March 19 chartering the New York State Bank, an incident noteworthy for the extraordinary ground taken by the petitioners. They set



forth that there were then only three banks in the State outside of New York City. These were the Bank of Columbia at Hudson, the Bank of Albany at Albany, and the Farmers' Bank, between Lansingburg and Troy. The stock of all three of these banks was chiefly owned by Federalists. Therefore the petitioners for the new bank, who were all Democrats, asked that their charter be granted in order that there might be at least one bank in the State under Democratic ownership!

The Legislature adjourned on April 6 without day, and in the ensuing elections the Democrats were again successful, as indeed they were that year in nearly all parts of the United States. The Democratic majority in the State was 8,588, and in the Assembly they had 83 members to only 17 Federalists. It was the irony of fate, however, that the sweeping Democratic victories of that year were largely to be credited to the good works of the defeated Federalists. Peace and good relations with Great Britain were due to Jay's once execrated treaty and to Adams's equally execrated diplomacy, while the fortunate condition of national finances, credit, commerce, and industry was due to the wise policy of Hamilton. The Democrats were, however, to be credited with the repeal of the hated Sedition law, with the settlement of the Mississippi-Louisiana controversy, and with the reduction of military expenses through the disbanding of the army.

Then came two more resignations of United States Senatorships. The first was that of DeWitt Clinton, who took that step in order to become Mayor of New York City. The latter office had been resigned by



Edward Livingston in order that he might be free to accept that of United States District Attorney—though he afterward regretted his resignation and signified willingness to be reappointed, concluding that it would not be inappropriate to hold both offices at the same time. Morgan Lewis, Chief-Justice of the Supreme Court, was a candidate for the Mayoralty. But DeWitt Clinton, who longed to be back in the thick of New York politics, wanted the place for himself, and so the Council appointed him and he resigned the Senatorship. The other resignation was that of General Bailey, who very soon after he had taken his seat in the Senate was appointed postmaster at New York and was therefore compelled to tender his resignation. The two seats remained vacant until filled by the succeeding Legislature on February 2, 1804, when John Armstrong and John Smith were elected almost without opposition.

The Twenty-seventh Legislature met on January 31, 1804, and Alexander Sheldon, of Montgomery county, was chosen Speaker of the Assembly. The Governor reported to it the Twelfth amendment to the Constitution of the United States, providing the method of electing the President and Vice-President, and it was promptly ratified. Reference was indirectly made to the impressment of American seamen by foreign powers, but generally the address was devoted to the routine interests of the State. On April 11 the Legislature adjourned, to meet again on November 4 for the choice of Presidential Electors.

Meantime there was in progress a campaign for the Governorship, and also for the Presidency of the United

States. The Governor would be chosen in April, and at the same time would be chosen a Legislature which would name the Electors who were to vote for President and Vice-President of the United States. That Jefferson would be reëlected President was a foregone conclusion. That Burr would not be reëlected Vice-President was no less certain. At Washington and throughout the country generally all confidence in his integrity and even in his loyalty to the Union had been lost. Nor does it appear that Burr himself desired reëlection. The office of Vice-President was not to his liking. It had too little political power, too little opportunity for intrigue and corrupt speculation. He therefore made no effort to secure renomination, and was quite resigned to the practically unanimous choice of George Clinton as the Democratic candidate to succeed him.

Clinton's candidacy for the Vice-Presidency made it necessary, however, for the Democrats of New York to select another candidate for Governor of the State, and for that place Burr hastened to put himself forward, apparently with confident expectation of success. The State was now so overwhelmingly Democratic that he could win if even a considerable faction of that party refused to support him. With George Clinton running for the Vice-Presidency, and DeWitt Clinton in the Senate or resigning the Senatorship to become Mayor of New York, and with the Livingstons all well provided with office, he thought that he had little fear from any rival from that Clinton-Livingston alliance which had been dominating the State; while of course

the Schuylers and the Federalist party were in a hopeless minority. Besides, he still had many friends, some of whom clung to him because of his undoubted talents, some through dislike of his opponents, some because of the strange fascination that he exercised over both men and women. William Van Ness was still his impassioned champion. John Van Ness Yates, son of the former Chief-Justice, Robert Yates, was on his side. Even Erastus Root favored his candidacy. In New York City, Jonathan Fisk, George Gardner, Peter Townsend, Marinus Willett, and David M. Westcott, among the foremost citizens, were active in his behalf.

Burr's friends were early, though not first, in the field. On February 18 they held a caucus of members of the Legislature in Albany, and formally nominated him for Governor. There were probably not more than a score of members present. William Tabor, a Dutchess county Assemblyman, was chairman, and Joseph Annin, Senator from the Western district, was secretary of the caucus. Two days later Marinus Willett presided at a meeting in New York, at which the nomination was ratified. Finally, a citizens' mass-meeting in Albany ratified the nomination of Burr, and named for the Lieutenant-Governorship Oliver Phelps, a great landowner of Ontario county.

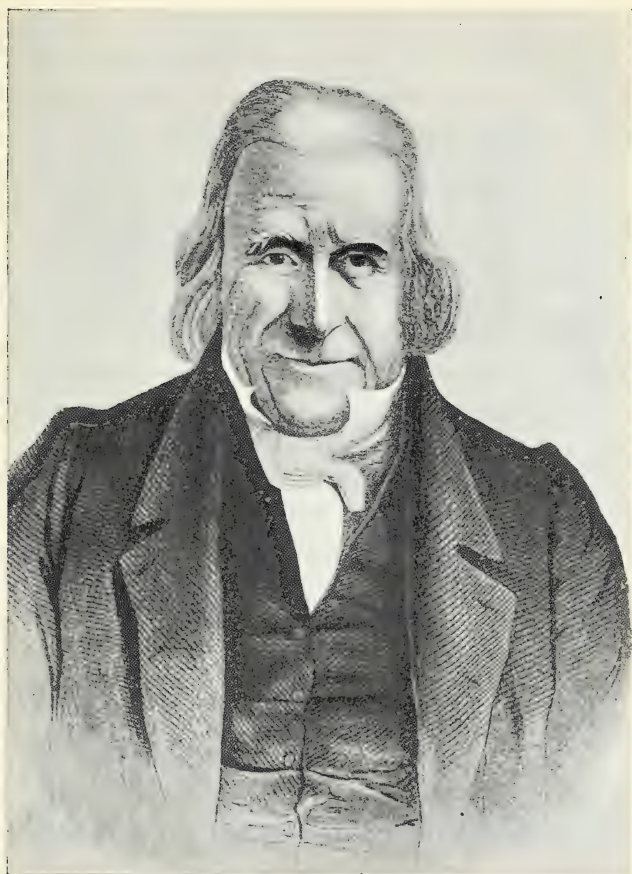
Before this, however, the majority of the Democratic members of the Legislature held a caucus in the Assembly chamber and nominated John Lansing, the Chancellor, for Governor, and John Broome, a Senator and member of the Council of Appointment, for Lieutenant-Governor. Mr. Lansing was reluctant to accept.

He liked the office of Chancellor, for which he was admirably fitted, and he hesitated to resign it when he still had ten years more to serve, for the sake of a political office the term of which was only three years. But he finally accepted when it was urged upon him that he alone could command the united strength of the party.

Within a few hours of Mr. Lansing's reluctant acceptance on that ground, however, the falsity of that ground was made apparent in the nomination of Burr. He thereupon withdrew his acceptance of the nomination, declaring that events subsequent to his acceptance had convinced him of the vanity of the hope that he would be able to hold the party united and to advance its principles. On February 20, therefore, another Democratic caucus was held, and after much discussion Morgan Lewis, Chief-Justice of the Supreme Court and a member of the Livingston clan, was nominated in Mr. Lansing's place, Mr. Broome remaining as candidate for Lieutenant-Governor.

Meanwhile, the Federalists were active but indecisive. They had no hope of electing a candidate of their own. But remembering their achievement in the Senatorial contest between Bailey and Woodworth, they reckoned that they might hold the balance of power between two Democratic candidates. When, therefore, both Lansing and Burr were put forward, they saw their opportunity, and, sad to say, their general inclination was to support Burr against Lansing—apparently on the ground that Burr's election would





MORGAN LEWIS

Morgan Lewis, 4th governor (1804-7); born in New York City, October 16, 1754; lawyer; soldier in revolution; member state legislature 1789, 1792; attorney general; judge supreme court, chief judge; governor, 1804-7; state senator, 1811-14; quartermaster general, brigadier general, major general, U. S. army in war of 1812; died in New York City, April 7, 1844.



discredit the Democratic party while Lansing's would strengthen it. For the sake of damaging the opposing party they were willing to imperil the welfare of the State.

Happily, nobler counsels prevailed, dictated by that transcendent statesman who had been the foremost genius of the Federalist party and who was now about to render through it his last great public service, though at the cost of his life. Henry Croswell, editor of the *Balance*, a Federalist paper at Hudson, had been convicted because Chief-Justice Morgan Lewis, before whom he was tried, had persisted in the old English rule of refusing to let the defendant prove the truth of the alleged libel. Appeal for a new trial was made, and Alexander Hamilton, then easily the foremost lawyer in the United States, went to Albany to argue in Croswell's behalf. His argument on that occasion was esteemed by Chancellor Kent as the greatest he ever made. It was indeed one of the most powerful appeals for the liberty of the press and for the rights of juries that ever were made by anyone, anywhere. It was fruitless before the court, which persisted in its former ruling. But it moved the Legislature at an early opportunity to embody his pleadings in the statute law by enacting the sound American principle that in suits for damages for libel the truth of the alleged libel might be pleaded and proved in defense, and that the jury should be the judges of both the law and the facts.

It was while Hamilton was at Albany on this errand that the Federalists held a private conference at Lewis's

Tavern in that city to determine their course in the contest between Lansing and Burr. Their advance purpose was, as stated, to support Burr. But Hamilton would have none of it. Three years before he had similarly intervened in a Democratic conflict, and had by his personal authority secured the election of Jefferson over Burr as President, because, as he wrote to Gouverneur Morris, Burr had "no principles, public or private; and . . . will use the worst portion of the community as a ladder to climb to permanent power and an instrument to crush the better part. He is," he continued, "sanguine enough to hope everything, daring enough to attempt everything, wicked enough to scruple nothing." That was Hamilton's just estimate of Burr in 1801, and it remained his estimate of him, confirmed by subsequent events, in 1804.

There had indeed been one event, only a short time before and not yet altogether ended, which immeasurably intensified Hamilton's opposition to Burr. That was that inexplicably stupid and wicked design of some New England Federalists, led by Senator Pickering, who had been Secretary of State in Adams's cabinet and who was afterward the chief spirit of the Hartford Convention, to dissolve the Union and to set up a Federalist republic consisting of the New England States, New York, and New Jersey, with Burr as its President! A more detestable scheme was never concocted. But it was vigorously urged, especially by Pickering and Roger Griswold, at the beginning of 1804; and there can be little if any doubt that the conspirators were in conference with the Federalist



members of the New York Legislature, and that the design of the latter to support Burr for Governor against Lansing was suggested by Pickering and Griswold as an essential part of their infernal plot.

This disloyal purpose was imparted by some of the conspirators to Rufus King, who of course instantly disapproved of it. It was also made known, by Pickering himself, to Hamilton. What Hamilton replied to Pickering is not on record. We can easily imagine it. The result was that Hamilton entered the secret conclave of Federalists at Lewis's Tavern with renewed determination to thwart Burr. He made a long, cogent, and impassioned appeal to the Federalists to support Lansing rather than Burr, on both partisan and patriotic grounds. To elect Burr, he said, would be to imperil the welfare of the State, and would give the Democrats a formidable leader. But Lansing's personal character would afford a guarantee against pernicious extremes, and his leadership of the party would not be so difficult to overcome as Burr's.

This counsel was intended to be confidential, and indeed the conference was supposed to be entirely secret. But some of Burr's agents were listening at the keyhole, and promptly reported to him what had been done, and especially what Hamilton had said. Burr therefore realized that it was Hamilton and Hamilton alone who stood between him and his ambition. Had it not been for that intervention of Hamilton's the New York Federalists would have supported Burr and would probably have assured his election as Governor. With that achieved, Pickering, Griswold, and the rest would

have been emboldened to proceed with their secessionist conspiracy. But Hamilton defeated the plot. It is true that he did not succeed in prevailing upon all the Federalists to oppose Burr. Griswold in particular held out and in a published letter urged all his friends to support Burr and denounced Hamilton for opposing Burr purely on grounds of "personal resentment"—a most ridiculous aspersion, that being one of the last motives of which Hamilton was capable.

When Lansing retired and Morgan Lewis took his place, Hamilton gave his support to Lewis, while Griswold and the other conspirators stuck to Burr. The struggle between the two Federalist factions continued and grew steadily more intense down to the day of the election. At one time Hamilton, fearful of Burr's success over Lewis, whom he regarded as a much weaker candidate than Lansing, thought of putting Rufus King forward as a Federalist candidate. He had no hope of electing him, but thought that he might command a full Federalist vote and prevent a part of it from being cast for Burr; but he relinquished that scheme when he found that Griswold and his faction would vote for Burr even against King.

DeWitt Clinton, of course, kept up his fight against Burr, through the medium of Cheetham's vitriolic pen, especially denouncing the methods by which Burr sought to curry favor with the lowest elements of the New York City slums. It was true that in this campaign Burr introduced for the first time the devices which afterward made "ward politics" notorious. Jefferson was quoted against Burr, as not being a repre-

sentative of true democracy. All the influence of the Clintons and Livingstons, and of Ambrose Spencer, was ranged relentlessly against Burr. Hamilton made no speeches and wrote no letters, but contented himself with using his influence in private against the man whom he considered to be of all his contemporaries the most dangerous to the State and to the nation. So the fight went on until the moment of the closing of the polls. When the votes were counted it was found that Burr had carried his chief stronghold, New York City, by a majority of about a hundred. In the State as a whole he was hopelessly defeated. The vote stood: Lewis, 30,829; Burr, 22,139.

Burr realized that his course was run. He had staked everything on this last supreme effort, and had lost. His anger, resentment, revenge all turned toward the man whom he rightly reckoned to be chiefly responsible for his defeat. He had never forgiven Hamilton for keeping him out of the Presidency in 1801. For keeping him out of the Governorship of New York in 1804 and out of the Presidency of a seceding republic, he resolved to have revenge at the cost of Hamilton's life. For a time he meditated secret murder, either by his own hand or through that of a hired assassin. But from that course he was deterred by two considerations. One was the personal peril; the other was the lack of the publicity which he craved. So he decided upon a duel, in which he could kill Hamilton without incurring the penalty of the law, and could enjoy the satisfaction of having it publicly known that he had done it. Accordingly he set diligently to work

to perfect himself in marksmanship, knowing that Hamilton, never a skilled shot, was and would be quite out of practice with arms. When he deemed himself sufficiently skillful, he wrote Hamilton, with Van Ness's aid, a studiedly offensive letter. Dr. Cooper, of Albany, had written to a friend that Hamilton had declared to him that he regarded Burr as dangerous and added that he could relate "a still more despicable opinion" which Hamilton had expressed of Burr. Referring to this, Burr curtly demanded that Hamilton should make "a prompt and unqualified acknowledgment or denial" of the use of any expression which could justify Dr. Cooper's statement. Hamilton replied temperately, declining to make either acknowledgment or denial, since he had no recollection of the matter and could not recall what Dr. Cooper referred to. He stood ready to give an accounting for anything with which he was directly charged, but he could not undertake to interpret the inferences drawn by third parties. Burr's response, probably written by Van Ness, was still more offensive than his first note. To this Hamilton replied formally, and then caused the suggestion to be imparted to Burr that he should inquire into the purport of the conversation with Dr. Cooper and ascertain precisely to what that gentleman had referred in his letter, declaring his readiness to meet the result, which he was confident would show that the conversation had related entirely to political matters. This Burr denounced as "mere evasion," and a little later he sent Hamilton the challenge which from the first he had planned.



Under the "code of honor" Burr was entirely in the wrong. He had no sufficient pretext for the challenge. But it was necessary, in the state of mind which then prevailed, for Hamilton to accept the challenge or suffer disgrace. He accepted, but the duel was deferred for a fortnight in order that he might conclude some important cases in court. In that time Hamilton went about his business as usual, while Burr devoted himself largely to pistol practice at a target. On July 4 they both attended the dinner of the Society of the Cincinnati, of which Hamilton had succeeded Washington as president. Hamilton was the gayest of the company, while Burr, somewhat taciturn and moody, left before the festivities were ended. A little later Hamilton dined with Colonel Trumbull, who had been one of Washington's aids; attended a reception given by Oliver Wolcott; and wrote an earnest letter to Theodore Sedgwick, one of Pickering's accomplices, sternly warning him against all conspiracies for dissolution of the Union. The impending duel was kept a secret from all but less than a dozen of his friends.

On the morning of Wednesday, July 11, Hamilton and his second, Pendleton, crossed the ferry from New York to Weehawken. With his second, Van Ness, and Dr. Hosack, Burr crossed by the preceding boat. Ten paces were measured out, the pistols were loaded, the principals were placed in position, and the word was given. Burr instantly aimed and fired, Hamilton not so much as raising his weapon. It was enough. Hamilton fell forward, discharging his pistol into the ground as he did so. "This is a fatal wound, Doctor,"

he gasped, and fainted. Burr and Van Ness incontinently fled from the ground without looking behind them. Hamilton was conveyed to his home, where he lingered on for thirty-one hours, giving all his thoughts meanwhile to the consolation of his wife and his friends.

Thus perished that man who, taken all in all, was probably the greatest constructive statesman in American history and one of the half-dozen greatest in the history of the world. Chancellor Kent indulged in no flight of fancy when he said that "had he lived twenty years longer" (Hamilton was only forty-seven) "he would have rivalled Socrates or Bacon, or any other of the sages of ancient or modern times, in researches after truth and in benevolence to mankind." He perished at the purposeful hand of that man who, taken all in all, was probably the most detestable of all who have attained prominence in American history, and one of the most detestable in the history of the world. There is none so devoid of redeeming qualities, and none whose evil deeds were so gratuitous and wanton. It is impossible to forget the almost intolerable provocation which Benedict Arnold suffered in the injustice of Congress and of some of his military associates. He should not have yielded to the temptation of that provocation, yet we cannot forget that the provocation was there. But Burr had no such provocation. He had no grievance. His wickedness was unprovoked, deliberate, committed for the sheer sake of wickedness, because he preferred evil to good. In every relation of life he was false; for even the notion that his love for his daughter was the one pure passion of his life must be

abandoned in the knowledge that he intended to leave her a legacy which would if possible corrupt her mind and soul. There may have been others approximating him in the promiscuous and unscrupulous gratification of sexual lust, but there was reserved for him the unique infamy of taking detailed and laborious pains to betray and to expose to the knowledge of the world each individual victim of his unclean passion. In many years of incessantly active public life he performed not a single deed of importance for the good of his fellow-men or that is remembered to his credit. In his private life it may truly be said of him, in reversed application of a famous epitaph, that he touched nobody whom he did not defile.

The one poor consolation which the State, the nation, and humanity had for the irreparable loss of Hamilton was in the fact that they thus were rid of Burr. For his murderous shot at Weehawken destroyed his power for evil and ended his public career as instantly and as certainly as it destroyed Hamilton's physical life. From that moment he was an outcast, shunned, despised, and detested. "The damned reptile," was Morgan Lewis's only mention of him, and it was by no means the most severe. Some of the filth and corruption which he had spawned into New York politics remained, to be a source of ferment and of poison. Otherwise, he was gone. He reappears no more in the history of New York.

Nor have we, indeed, much more to do with Hamilton. His gigantic genius had not been circumscribed by the boundaries of the Empire State. The most

illustrious citizen New York has ever had, his labors were chiefly performed for the whole nation rather than for the State. He had no part in the organization of the State, and he held no office in its government. His influence upon its affairs and its destinies was at times dominant and controlling, but it was merely incidental to his greater work for the whole United States.

The one incomparable figure in the first generation of New York's history was that of Jay. He was to the State what Hamilton was to the nation. But he, too, was now forever removed from active participation in public affairs, not by death or exile but by voluntary retirement to a repose more fully earned by him than by any other man of his time. The variety, the incessancy, the arduous importance of his labors for State and nation during thirty years had exceeded those of any other man in either the early or the later history of the American republic. He had been legislator and executive, jurist and diplomat, advocate and financier, revolutionary propagandist and constitutional constructor; he had been one of the three chief framers of the Constitution of the United States and practically the sole author of the Constitution of the State of New York; he had made the treaty which reëstablished peace and recognized the independence of America at the end of the Revolution, and the subsequent treaty which complemented the former and gave America her proper place among the nations; he had been the propounder of the most significant and important judicial dictum in the first dozen years of American jurisprudence; and



second to Washington alone he had been an unrivalled personal force for purity of life, for unselfish patriotic devotion, and for the loftiest ennoblements of human society and human life. He had passed out of all active participation in New York's political and governmental history, but he had left behind him a beneficent influence, incomparable and imperishable.

## CHAPTER XII

### THE NEW ERA

**N**EVER, perhaps, was the political leadership of a great State more completely transformed in so short a time than was that of New York in 1804. All the great figures of the preceding years were removed. Hamilton was dead. Burr was worse than dead. Jay was in retirement. Clinton was about to be retired to the Vice-Presidency. Robert R. Livingston was Minister to France. A new era had come, with new men at the fore. Something of the old family rule and feuds was still to persist, through the dominant activities of DeWitt Clinton. But in the persons of such men as Daniel D. Tompkins there were arising leaders who had no connection with any of the three great houses.

Morgan Lewis became Governor at the beginning of July, 1804. He had begun his career as a soldier of the Revolution with brilliant promise, but the promise had not been fulfilled and never was fulfilled. He was an efficient army officer, and after the war he became a competent and fairly successful lawyer. His political preferment was due entirely to his relationship to the Livingstons, though he justified it by showing himself at least entirely respectable as Attorney-General and as Chief-Justice. The brilliance of his student days at Princeton had vanished. But he was safe and sound,

industrious and honest. Ability for leadership he had none, but he made an acceptable public servant.

His first act after his inauguration was to convene the Council of Appointment, of whose activities there was need. By accepting the Governorship he had left the Chief-Justiceship vacant. The Council admirably filled that place by the promotion of James Kent from an Associate-Justiceship, and then filled the latter place by the appointment of young Daniel D. Tompkins, who only three months before had been elected a Representative in Congress. It was an extraordinary thing to appoint so young and inexperienced a man as Mr. Tompkins to such a place on the bench, and it is probably to be explained by the fact that practically all the elder jurists of importance were Federalists. Already political considerations had entered into the choice of Judges. However, of Mr. Tompkins's fitness for the place there was no question.

There followed two other appointments of a far less worthy character. One was that of a Mr. Tiffany as Clerk of Ontario county in place of Peter B. Porter, who was removed from the office for no other reason than that he had been a friend of Burr. It does not appear that Mr. Porter was an offensive partisan, certainly not that he participated in any of Burr's scoundrelism. On the contrary, he was an excellent public servant, whose retention in office was generally desired by the people without regard to party. He was afterward a distinguished Representative in Congress and Secretary of War in the cabinet of John Quincy Adams—a man of parts and character. His dismissal

from office to make room for a comparatively insignificant friend of the Governor's was an unfortunate and inauspicious incident, though not at all incongruous with some of the preceding performances of the Council in that dawning age of spoils.

The other appointment was in some respects still more offensive. It was that of Maturin Livingston as Recorder of New York. This man was a Livingston and he was the Governor's brother-in-law, but he had absolutely nothing else to recommend him for that very important office. As a lawyer he was of the third class, lacking in knowledge and in industry. In character he was not above reproach, some of his indulgences in social pleasures being of at least dubious propriety. As a man his temperatment and manners made him intensely unpopular. That such a man, solely because of family relationship, should be forced into one of the most responsible offices in the chief city of the State, was little short of a scandal. More, it was a disastrous thing for Lewis himself and for the Livingston family, for it greatly displeased DeWitt Clinton, who was then Mayor of New York, and led to his hostility to Lewis and to the whole Livingston clan.

The Twenty-eighth Legislature met on November 6, 1804, for the special purpose of choosing Presidential Electors, and Alexander Sheldon was reëlected Speaker. In his opening address the Governor reported the going into force of the amendment to the Federal Constitution for the election of President and Vice-President, which was calculated to avoid a repetition of the "unpleasant scene" which had marked the preceding



election. He called attention to the need of a law providing for the filling of vacancies in the Electoral College, which the Legislature promptly supplied.. John Armstrong's mission to France had caused another vacancy in a Senatorship, which the Legislature filled by the election of Dr. Samuel L. Mitchell. Much attention was paid in the address to the need of reform in the State prisons and in the administration of criminal law, and the further fortification of the port of New York and the development of public education were earnestly urged. The Legislature, after choosing Presidential Electors and enacting the law for the filling of vacancies in the College, adjourned on November 12.

The regular session opened on January 28, 1805. On February 5 the Governor addressed to the Legislature an elaborate message on the subject of public education, in which he proposed that the extensive public lands of the State, about 1,500,000 acres, should be devoted to the purpose. From their sale a fund should be secured, to be put under the charge of the Regents of the State University, for the support of colleges, academies, and common schools. In response, the Legislature on April 2 enacted a law setting apart 500,000 acres of land for the creation of a fund for the establishment and support of common schools. Another law incorporated "the Society instituted in the city of New York for the establishment of a free school for the education of poor children who do not belong to or are not provided for by any religious society." A third provided for the

establishment of Union College and for the conduct of public lotteries for its endowment. On April 10 the Legislature adjourned without day.

During this year Benson Hobart, the United States District Judge for the State of New York, died. The succession was offered by the President to Brockholst Livingston, who declined to accept it. Then it was given to Matthias B. Talmadge, who as a State Senator had in 1803 led the bolt in the Legislature in favor of his brother-in-law, Theodorus Bailey, for United States Senator, against John Woodworth, the regular nominee of the Democratic caucus. This appointment was probably due to the influence of George Clinton, who had become Vice-President, to whom Talmadge was related by marriage. It was an unfortunate one, however, because of Mr. Talmadge's unfitness for the place. He was not of high legal attainments, he was more indolent than industrious, and he was a physical invalid. His incapacity led a few years later to the division of the State into two judicial districts and to the appointment of William P. Van Ness as Judge of the more important Southern district, while Talmadge was left in the less important Northern district until his death in 1820.

The most important controversy of the year 1804 related to banking interests, which were rapidly increasing in importance. Mention has already been made of the chartering of the State Bank in 1803 as a Democratic concern. Previously there had been organized by Hamilton and his friends a joint stock Merchants' Bank, in New York, and also by other



JAMES KENT

James Kent, chancellor; born in Putnam county, July 31, 1763; lawyer; served in state legislature, 1791-93; master in chancery, 1793; recorder of New York City, 1797; justice supreme court, 1798; chief justice, 1804; appointed chancellor, October 25, 1814 and retired at 60, the age limit, in 1823; died in New York City, December 12, 1847.





capitalists a similar concern known as the Mercantile Company, at Albany. These private banks applied for charters, which were refused, largely, it was believed, because of the opposition of the State Bank, whose promoters had at first promised to support the applications. The Merchants' Bank renewed its application for a charter in 1804. But the Legislature, influenced by DeWitt Clinton and others interested in the Manhattan Company, again refused it. Nor was the Legislature content with mere refusal. It enacted a bill forbidding the conduct of the banking business by unincorporated concerns, under heavy penalties, and declaring all notes or other securities issued by them to be void of value. The Merchants' Bank of New York and the Mercantile Company of Albany, which though without charters were conducting an extensive, profitable, and stable business, were notified to retire therefrom on or before the first Tuesday of May, 1805, under peril of the full penalty of the law.

A bitter controversy raged over this matter during the year, and was continued in the next Legislature, in 1805, when the Merchants' Bank renewed its application for a charter. DeWitt Clinton opposed the granting of the charter on the ostensible ground that two banks were sufficient for the business needs of New York and that the creation of a third would be contrary to public interest. His real reasons were, however, doubtless that he wished to prevent competition with his own Manhattan Company, and that, as declared frankly by the Democratic press, he did not want any more Federalist banks started. Governor Lewis, on the other

hand, favored granting the charter to the Merchants' Bank. He did not agree with Clinton's narrow partisanship, he had a more adequate estimate of the growing needs of business, and he had above all a truer sense of justice to the company concerned. The Merchants' Bank had begun its career under the sanction of the law in good faith, had invested large sums of money in a building and in other operations, and was conducting its business in an honest and trustworthy manner, and it ought, therefore, to have been permitted to continue its existence.

When the matter came up in the Legislature of 1805, Clinton sent Maturin Livingston to Albany to argue with the Legislature against granting the charter. But no sooner had he reached the capital than he changed sides and became a strong advocate of the Merchants' Bank and its application. It does not appear that he was corruptly influenced, though his integrity was not of a fiber so robust as to be always superior to suspicion. Neither can we be assured that he acted on principle and conviction of justice. It seems probable that he was influenced by the Governor, to whom he was closely related and to whom he owed his official position. His arguments, together with the strongly-exerted influence of the Governor, apparently sufficed to secure the granting of the charter by a considerable majority, composed of all the Federalists and many Democrats, though a little later the prevalence of other influences was disclosed.

From the Legislature the bill went before the Council of Revision, and there the conflict was renewed with

added violence. Justice Ambrose Spencer vigorously opposed the measure and moved for the vetoing of it. His first ground was, that another bank was not needed in New York, and that the establishment of it would be prejudicial to public interest. That was a weak ground, the validity of which was generally discredited. But the second was more formidable. He charged that the passage of the bill had been procured through bribery and corruption of members of the Legislature. Thus, in the Senate it had passed by a vote of 14 to 12. One of the 14 was Ebenezer Purdy, who, Justice Spencer declared, had been bribed by the Merchants' Bank. Had Purdy voted against the charter, as he would have done but for the bribe, it would have been defeated. This serious charge was based upon the affidavits of Messrs. German and Thorn, Democratic members of the Assembly, to the effect that Purdy had offered them large compensation for their votes if they would cast them in favor of the bill, and had told them that he had been persuaded to favor the charter at a confidential conference with the directors of the Merchants' Bank. Justice Spencer argued, with much force, that for the Council of Revision to ignore these scandalous circumstances, and to sanction a measure thus tainted with corruption, would be subversive of pure legislation and a reproach to the government of the State.

There was no question of Justice Spencer's sincerity. Neither, unhappily, was there much doubt of the truth of the charges against Senator Purdy, who presently resigned his seat in order to escape an investigation.

Resignation, as Webster said of suicide, was confession. Nevertheless the Council of Revision declined to veto the bill, and the charter was thus granted. There was and can be, of course, no thought that the Council was animated by improper motives, any more than that Governor Lewis was corrupted by the bank directors. Chief-Justice Kent was of all men one of the purest and most incorruptible. He was also one of the most inclined to take a broad and catholic view of the case and to favor the chartering of the bank on the grounds of equity which had been set forth by Maturin Livingston, and of the rapidly growing needs of the business of the metropolis. The Governor was already strongly committed to the charter. Justices Brockholst Livingston and Smith Thompson were members of the Livingston family, and therefore stood with the Governor and against DeWitt Clinton; and Chancellor Lansing stood with them. Thus the Merchants' Bank won its charter, though with an ineffaceable taint upon it; and thus an irremediable breach, though as yet not openly recognized, was created between the Clinton and Livingston clans.

Closely following upon these transactions came the April elections of 1805. Senator Broome having been elected Lieutenant-Governor, his seat was vacated, and DeWitt Clinton was put forward to fill it; Ezra L'Hommedieu also being nominated for reëlection from the same (Southern) district. General Bailey, who had become postmaster of New York, was chairman of the convention which nominated these candidates, and he and his associates made it clear that they



specially favored Messrs. Clinton and L'Hommedieu because that charter had been corruptly secured but partly, and chiefly, because "a new bank has been created in our city and its charter granted to political enemies"! Both these candidates were elected, as were the Democratic candidates generally throughout the State. In the Eastern district there was a serious split in that party over a Senatorship. Joseph C. Yates, afterward Governor of the State, was regularly nominated, at Schenectady, but the Democrats of Albany refused to accept him and named Mr. Quackenboss instead. DeWitt Clinton's influence was given to Quackenboss, and he received the majority of Democratic votes; but all the Federalists, having no candidate of their own, voted for Yates and thus elected him. The Democrats secured an overwhelming majority in the Assembly, a circumstance which proved more mischievous than beneficial to them.

Soon after the election open war began in the press between Clinton and Lewis. Clinton's New York organ, the *American Citizen*, and the *Register* of Albany, which also was friendly to him, began a series of persistent attacks upon the Governor and all his friends. Burr's paper in New York, the *Chronicle*, was merged with the Poughkeepsie *Journal*, and that paper, edited by Isaac Mitchell and probably controlled by Dr. Tillotson, the Secretary of State, led a furious counter-attack upon DeWitt Clinton and all his friends, especially Justice Spencer; in which it was seconded by the *Plebeian*, an Ulster county paper directed by Jesse Buel, afterward editor of the Albany *Argus*. This

controversy, which became exceedingly acrimonious, was begun by Clinton's friends, presumably at Clinton's own incitement, Lewis never manifesting any animosity toward Clinton until the latter had attacked him. Doubtless Clinton resented Lewis's appointment of his own friends and relatives to office; yet considering his own record he was the last man in the State who should have made that a cause of conflict.

It is difficult to avoid the conviction that the quarrel was deliberately forced by DeWitt Clinton for the sake of overthrowing the power of the Livingston family and making himself supreme. To that end Clinton began making overtures to some of the former adherents of Burr, among whom there were men of character and influence, such as John Swartwout, with whom Clinton had fought a duel, and Peter Irving, brother of Washington Irving and editor of Burr's *Morning Chronicle*. There were not enough of them, with their followers, to maintain a formidable party organization of their own, and they had no leader since the downfall of Burr. But they would be an important accession to some other party or faction. To exactly what extent overtures were made to them by Clinton, and indeed also by some Federalists, is not to be ascertained, but that some were made is not to be doubted. A few years later Matthew L. Davis of New York addressed a series of open letters to DeWitt Clinton explicitly charging that in December, 1805, Levi McKean, of Poughkeepsie, a Burr-rite, had informed his friends that proposals had been made "by the Clintonians to form a union with the Burr-rites"; that Clinton, Swartwout, Peter Irving, Davis, General

Bailey, and Ezekiel Robins had participated in a direct personal conference, in which such union was fully agreed upon; and that under the terms of the union Burr was to be recognized as a member of the Democratic party, that Clinton's paper, the *American Citizen*, should stop attacking Burr and his friends and should recognize them as having all along been good Democrats, and that Burr's friends should be as eligible to office as the Clintonians.

Clinton promptly denied the truth of all these statements and announced that he would begin suit against the publisher of them for libel, the name of the writer of them not being at the time disclosed. The publisher cheerfully responded that he was quite ready for the suit, and that he purposed in defense to prove the truth of all the allegations. It was significant that the suit was not pressed, but that Clinton let the matter drop. The impression was thus irresistibly conveyed that there was some truth in Davis's charges, which Clinton was reluctant to have judicially proved. That there was also much exaggeration is not to be doubted. Davis was an intense and probably not over-scrupulous partisan, and there is reason to suspect that he was endeavoring to damage the standing of Clinton with the masses of the Democratic party who were implacably hostile to Burr and all his works. But it seems to be certain that Clinton's close friend, General Bailey, had conference with Burr's friend Swartwout, that Clinton himself had at least one conference with Swartwout, that several of the leaders of both factions had a cordial

meeting, and that a considerable loan was made by the Manhattan Bank, which was under Clinton's control, to a leader of the Burrites.

Four days after the meeting of the leaders just referred to, which occurred at Dyde's Hotel, a much larger meeting of protest against it and of denunciation of the reported union was held at Martling's Long Room, in New York, then the headquarters of the Tammany Society, participated in by some of Burr's followers and by a larger number of Democrats, and probably incited by the friends of Governor Lewis. At this meeting a new Democratic faction was formed, which for a time was known throughout the State as Martling Men, but which in fact was practically identical with the Tammany Society. DeWitt Clinton, apparently foreseeing its importance, made haste to try to placate it, and wrote from Albany to his friend Bailey repudiating the former meeting at Dyde's Hotel and approving the utterances of the meeting at Martling's. But this was in vain. The new faction was inexorably opposed to Clinton and persisted in its hostility until for a time it drove him from power and office.

Thus the stage was set for the opening of the drama at Albany when the Legislature met in January, 1806. It must be confessed that both Clinton and Lewis were making mistakes, as both afterward had cause to realize and to regret. In favoring the granting of a charter to the Merchants' Bank the Governor undoubtedly offended the majority of his party, and by persisting in that course after the bribery scandal had been exposed he outraged non-partisan public opinion. We may



sympathize with his resentment at Clinton's autocratic airs, but must recognize his folly in playing into Clinton's hand by giving him a plausible pretext for an open fight. As a matter of tactics and prudence he should have realized that the power of the Livingstons was rapidly waning while that of the Clintons was unimpaired if not increasing, and that alliance was his true policy rather than war. For Robert R. Livingston had retired from politics almost as completely as Jay; Edward had gone to Louisiana; Brockholst was getting ready to go upon the bench of the Supreme Court of the United States; and Maturin was a negligible factor. As for the relatives by marriage, John Armstrong had taken Robert R. Livingston's place in France; Smith Thompson was unwilling to take any part in party or factional fights; and Dr. Tillotson had no capacity for leadership or the exertion of material influence. As for Lewis himself, his capacity for leadership was equally slight.

DeWitt Clinton, on the other hand, erred in impatience. He had only to sit still, and everything would have come to him. But his aggressive and imperious nature would brook no delay. He preferred to fight, even to force the fighting when there was no need of it and when prudence counselled Fabian tactics. In this way he incurred unnecessary animosity. He roused up against himself an opposition which for a long time overcame him. He established precedents which in after years came back to plague him. He compelled himself in time to seek alliances and bargains which were discreditable to him. He was one of the most

forceful and efficient figures in all the history of the State, but he was his own worst enemy through his arrogance and intolerance.

The Twenty-ninth Legislature met on January 28, 1806, and Dr. Alexander Sheldon was again chosen Speaker of the Assembly. In his address the Governor dwelt first upon the threatening aspect of the foreign affairs of the nation and the urgent need of additional preparations for defense, both in coast and harbor fortifications and in improvement of the militia system. Under the lead of a Senate committee of which DeWitt Clinton was chairman the Legislature promptly responded by appropriating \$62,000, with which the Governor should purchase ordnance and supplies. Attention was also paid in the address to public health, reform of the criminal law relating to murder and manslaughter, the maintenance of the botanic garden of Dr. David Hosack—which afterward became the foundation of the wealth of Columbia College and University,—and the desirability of enacting general laws for the incorporation of companies and societies so as to avoid the multiplicity of private acts which were encumbering the statute books.

Much amusement was afforded to the journalistic and other wits of the day by the Governor's well meaning but naive and over-solemn discussion of the need of drummers as a part of the military equipment of the State. Apparently this was, to him, one of the most pressing issues of the day. "The drum," he said, "is all important in the day of battle. It may decide the fate of an army." Therefore he earnestly recommended the

adoption of measures to "insure a competent number of persons skilled in the martial exercise of that instrument."

When, early in the session, the Assembly elected a new Council of Appointment, a "new departure" was established, over which a sharp controversy arose between the friends of the Governor and the partisans of DeWitt Clinton. Thitherto it had been the rule for a member of the Council for each district of the State to be selected by the members of Assembly from that district. But at this time DeWitt Clinton was doubtful of the support of the members of Assembly from his own district, the Southern, while he was sure of the support of the Assembly as a whole. He therefore had the four members of the Council selected by a general caucus of all the Democratic members of Assembly, with the result that he himself was chosen from the Southern district, with Robert Johnson from the Middle, Adam Comstock from the Eastern, and Henry Huntington from the Western. This gave great dissatisfaction to the Governor and his friends, who saw in it the complete control of State patronage by DeWitt Clinton. That was of course the purpose of the procedure, and the effect was soon made manifest. When the new Council met on March 26, the work of making another "clean sweep" of the offices was undertaken. Maturin Livingston was removed from the New York Recordership and was replaced by Pierre C. Van Wyck. This was a change for the better, since Livingston had never been fit for the place; but it was not so much because he was unfit as because he was a Livingston,

which family Clinton was determined to expel from power and office. Next, Thomas Tillotson, a brother-in-law of the Livingstons, was removed from the office of Secretary of State, and Elisha Jenkins was put into his place. For this change there was no possible reason save that of Clinton's hostility to the Livingstons. Archibald McIntyre, a partisan of Clinton's but a most excellent public servant, was made Comptroller in Jenkins's place.

Following these major changes, the Council proceeded to fill the minor offices throughout the State, so far as possible, with friends of Clinton and enemies of the Governor. County officers, such as Judges, Clerks, Sheriffs, and Surrogates, and Justices of the Peace, were all chosen on factional grounds. Against this the Governor protested, and he was supported in his protest by Mr. Huntington, who, though a friend and partisan of Clinton's, was opposed to the spoils system. But such opposition was in vain. Clinton, Johnson, and Comstock formed a majority of the Council, and under the rule which Clinton had secured from the Constitutional convention of 1801 they were able to make and to confirm appointments over the head of the Governor and his one supporter. It was a further step in that spoils system in which New York was at that time almost unique among the States of this Union.

While these things were being done by the Council of Appointment, Clinton's war against Lewis and the Livingstons was also waged in the Legislature. On the motion of Clinton's close friend, Richard Riker, of New York, a bill was introduced and enacted making



it a crime punishable with heavy fine and imprisonment for anybody to promise, offer, or give to any member of either house of the Legislature money, goods, or other consideration for the influencing of his vote, and making it also a high misdemeanor similarly punishable for any member to accept such consideration. There can be no question that this was an entirely proper and desirable law. Neither, however, can there be any question that it was suggested by the charges of bribery in connection with the Merchants' Bank charter, and that it was adopted not merely through legitimate and laudable detestation of bribery but also, and perhaps more directly, in order to fasten odium upon the Governor's friends and even upon the Governor himself, though of course there was no thought that he had been implicated in the corruption.

Clinton himself introduced a resolution into the State Senate providing for the expulsion of Ebenezer Purdy, on the ground that he had accepted a bribe from the Merchants' Bank people and had in turn tried to bribe others. There was no doubt of the passage of the resolution or of the expulsion of the offending Senator. But Purdy forestalled such action by resigning his seat before the resolution could be adopted. He was apparently permitted to resign without opposition, and as the bill for the punishment of bribery had not yet been enacted he was perforce permitted to go unscathed for his gross misdemeanor. It was impossible to regard him as an innocent victim of partisan persecution. His guilt was seriously doubted by nobody. Yet in the exacerbated state of

factional sentiment his practically enforced retirement from the Senate was looked upon not so much as a purging of that body of unworthy membership as just another stroke in the battle between Clinton and Lewis.

The Legislature adjourned without day on April 7, and the battle was then transferred to the hustings. Both sides prepared for a vigorous battle at the April elections. Had the contest remained between the two factions of the Democratic party, it is quite probable that Clinton would have won. Despite his faults of temperament, he was a far more forceful, adroit, and resourceful party leader than Lewis or any other man on the Livingstonian side. But it did not thus remain. The Federalists took a hand in it. They had thus far held aloof, quite willing for the two Democratic factions to fight and if possible to destroy each other. But in the elections they determined to give active support to Lewis. They had no hope of winning with their own candidates, wherefore they would aid Lewis's. That was because they saw in Lewis a much weaker leader than Clinton, and therefore one more easily to be overthrown. If they could beat Clinton with Lewis they might in turn overthrow Lewis, while if Clinton should win they would have little hope of dislodging him from power.

In counties where they felt sure of success with their own candidates, therefore, they supported such candidates and succeeded in electing a considerable number of them. Elsewhere, they cast their votes for the friends of Lewis. This was a plan of campaign which became characteristic of New York politics, and which

has frequently been pursued even down to the present time. In 1806 it was successful. Clinton indeed secured a small majority of the Democratic members. But a fusion of Lewis's friends and the Federalists formed a majority of the Legislature. In this campaign the most efficient leader of the Federalists was William W. Van Ness, a cousin of the William P. Van Ness who had been Burr's closest friend—a man of much ability and of consummate shrewdness in practical politics, as well as of exceptional social charm and "personal magnetism."

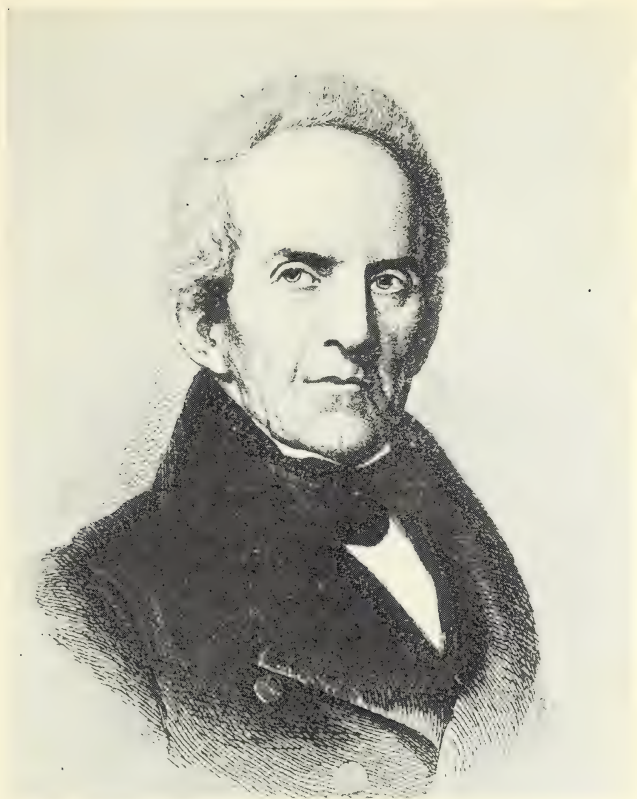
After the State elections the two factions rested on their arms for a time, anticipating the renewal of the war in the next session of the Legislature. Meanwhile, however, some vigorous local operations occurred in New York City. Although this was DeWitt Clinton's home, it also was the home of his most implacable and efficient foes, and the latter were in the Democratic party almost as numerous as his friends. It was here that the coöperation, alliance, or fusion between the Federalists and Lewis's faction of the Democracy was most marked and most successful. The result was that this fusion gained control of the Common Council of the city by a substantial majority, and forthwith proceeded to effect another "clean sweep," turning out of office every friend of Clinton, from the City Comptroller down, and putting in their places friends of Lewis and Federalists. There was no pretense that this was done for any other than partisan reasons.

It was during these campaigns of 1806 that Lewis's faction of the Democracy obtained the popular name

of "Quids." The origin of this appellation has been variously ascribed, but it appears to have arisen from a curious exercise of the fondness for classicism which then prevailed. It will be recalled that writers for the press almost invariably used classic names for their pseudonyms, such as "Aristides," "Marcus," and what not. So the Clintonians insisted that they were the only real Democratic party, the Federalists were the other major party, and the followers of Lewis and the Livingstons were only a third party or, in Latin, "*Tertium Quid*." This was popularly shortened into "Quid" or "Quids."

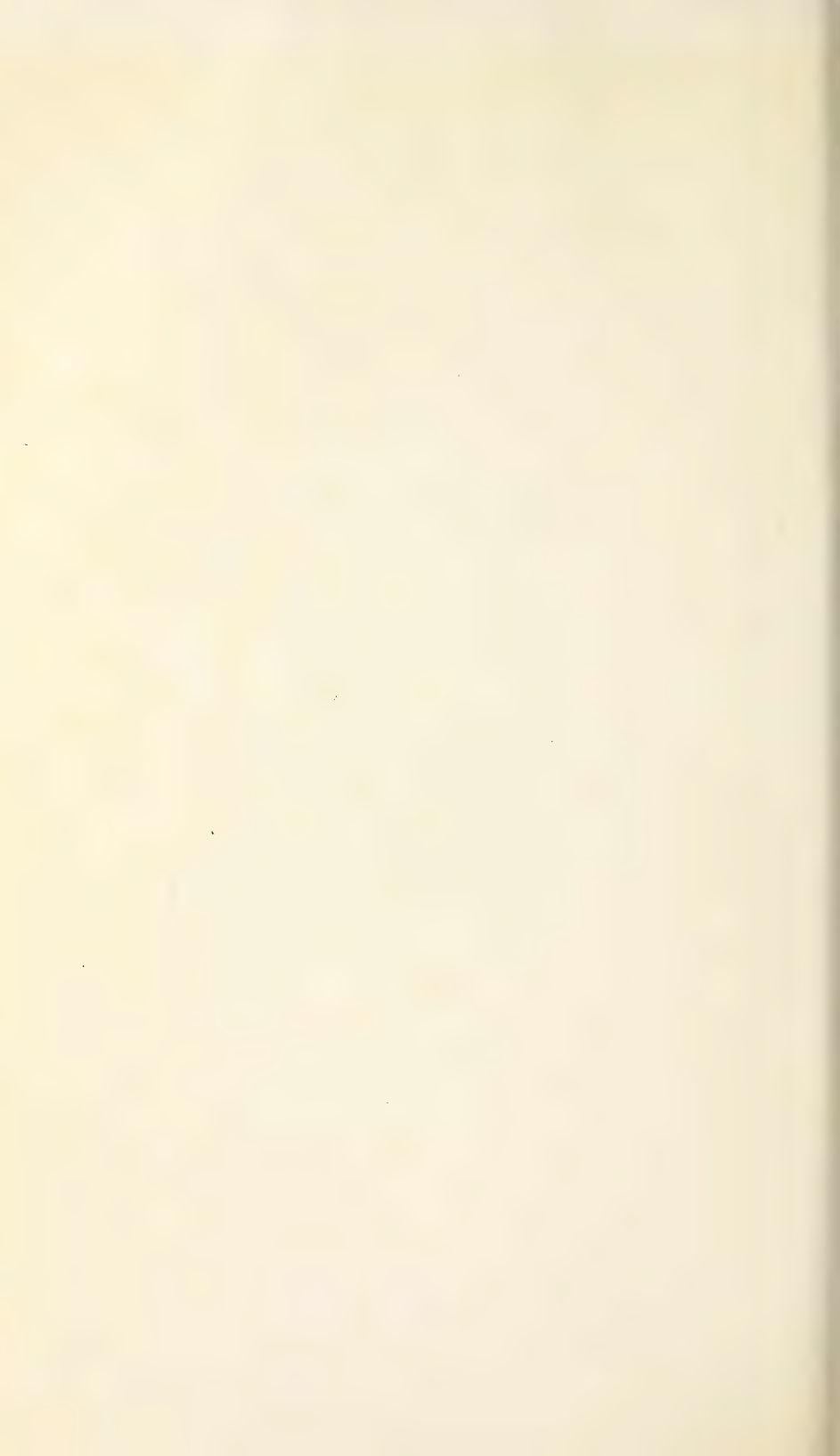
The Thirtieth Legislature met on January 27, 1807. During the months preceding the various party leaders had been busily engaged in preparing for the fray which was certain to ensue, with a resolution to make it a battle to the death. Clinton controlled a majority of the Democrats, but a fusion of the Quids and Federalists—of which latter there were eighteen in the Assembly—would form a majority of the whole Legislature. Care was taken, through promise of patronage, to make this fusion effective, as indeed it proved to be. The first test of strength arose over the election of the Speaker of the Assembly. Dr. Sheldon, Clintonian, was a candidate for reelection, but he was opposed by Andrew McCord, of Orange county, a Quid; and the latter was elected by a majority of eleven votes. There was a like contest over the Clerkship. The brilliant and popular Mr. Southwick was a candidate for reelection, and at first seemed certain of success. Everybody liked him, and he merited such regard because of his talents





SMITH THOMPSON

Smith Thompson, jurist, born in Stanford, N. Y., January 17, 1768; lawyer; member of legislature, 1800; delegate to constitutional convention, 1801; justice supreme court, 1804-14; chief justice, 1814-19; secretary of the navy under President Monroe; justice United States supreme court, 1823; died at Poughkeepsie, December 18, 1843.



and his cordial and amiable disposition. As Clerk for three sessions he had been equally courteous and generous to friend and foe. Nevertheless, he was a friend of DeWitt Clinton, and that was enough to doom him. He was beaten by the narrow majority of six votes by Garret Y. Lansing, a nephew of the Chancellor, John Lansing, and one of the bitterest foes of Clinton in all the State.

Governor Lewis, apparently thinking that there would be enough politics in the session without his injecting any, made his address, at the opening, as colorless as possible, though not devoid of merit as a presentation of State interests. He exulted in the fact that New York had far outstripped Philadelphia in commerce, recommended encouragement of agriculture and the arts and a strengthening of the common schools, suggested some reforms in jurisprudence, dwelt at length upon the importance of the militia, which seems to have been his pet hobby, and called attention to a boundary dispute with the State of New Jersey. "I have been an eye-witness," he said, "to the state of the militia; I have personally inspected nearly the whole, and I can with truth assert to you that they have not, as I verily believe, of such arms as a soldier ought to have, and as our law requires, a musket to every tenth man, nor a bayonet to every twentieth; many are destitute of arms of every description, and appear on parade shouldering a staff in place of a firelock. . . . Nor is the deficiency in arms greater than that in colors and martial music."

It was impossible, however, that the Governor should avoid making some reference to the current political strife, and he did so on February 11 in his reply to the Assembly's address in response to his own. He declared that he had been "obliged to combat the prejudices of some, the jealousies of others, and the passions of all whom interest or ambition may excite." If even Washington, even after his death, and Jefferson, had not escaped odious aspersions, "it were vanity consummate for one far inferior to either to hope for universal approbation." "Sensible of my own imperfections," he continued, "I am willing to believe I may have committed errors, but I had fondly hoped they were such, if any, as merited indulgence rather than asperity. Conscious that, to the extent of my ability, the public good has been the leading object of my career, I have submitted to obloquy with no little resignation. The approving voice of the immediate representatives of my fellow-citizens is, however, an ample recompense, and affords a gratification which can only be expressed in acknowledgments of your liberality and candor." From this it is obvious that the Assembly's address had been dictated by the combination of Quids and Federalists.

On the second day of the session the Assembly elected a new Council of Appointment. Clinton discreetly avoided being a candidate for reëlection, discerning defeat for his faction. The result was the election of Thomas Thomas, James Burt, Edward Savage, and John Nicholas, all opponents of Clinton, and immediately thereafter the spoils machine was set to work, its efficiency heightened by the element of ruthless revenge.



The first act was to remove DeWitt Clinton from the Mayoralty of New York, and to appoint in his place Smith Thompson, then a Justice of the Supreme Court and a brother-in-law of the Livingstons. Mr. Thompson, having no love for politics, declined the appointment, whereupon Colonel Marinus Willett, who had been one of Burr's foremost supporters, was named in his place. A little later Pierre C. Van Wyck was removed from the Recordership of New York and Maturin Livingston was restored to the office; and in like manner Mr. Jenkins was removed from and Dr. Tillotson was restored to the office of Secretary of State. Teunis Wortman was removed from the City Clerk's office to make room for Thomas Morris, a prominent Federalist. Isaac Kibbe, who had been an ardent follower of Burr, was made Harbor Master at New York, but seems to have been an unfortunate choice for the fusionists, since he afterward became a zealous lobbyist in Clinton's interest. Wherever it was possible the Quids and Federalists reversed the work which the Clintonians had done a year before, using public offices, great and small, as sheer spoils of victory in cynical disregard of merit and of public service. The Legislature adjourned without day on April 7, leaving the further prosecution of the political war to the people at the polls, when a new Governor and Legislature were to be chosen.

It had been the custom for nominations for Governor to be made by party caucuses of members of the Legislature. But in 1807 the Clintonians had a majority of the Democratic members and there was no hope of

Governor Lewis's renomination, which he desired, through that agency. Accordingly, on the first day of January, nearly a month before the Legislature would convene, Lewis's friends organized a popular Democratic convention in New York City and had it formally nominate the Governor as the regular Democratic candidate. This was a "new departure" and was much resented by the Clintonians, who denied the right of such a gathering to speak for the party, or of its candidate to pose as the regular candidate of the party. Nothing definite was done, however, for six weeks and more. The Clintonians waited to see what course the fusionists would pursue in the Council of Appointment.

The moment the Council removed Clinton from the Mayoralty of New York, however, the die was cast. Clinton gave orders that a candidate should be put into the field who would defeat Lewis at all hazards. The evening of that very day, February 6, the Clintonian members of the Legislature, being a majority of the Democrats, gathered in the Assembly chamber to nominate a candidate for Governor. Their quest confessedly was for the man who was most certain to defeat Lewis. But it was not an easy one. There were two conspicuous candidates. These were DeWitt Clinton himself, and Ambrose Spencer. Logically, one of them should be chosen. But to both there was an insuperable objection. They were members of the Clinton family. The fight against Lewis was to be in fact a fight against the Livingston family, which was to be charged with filling all possible offices with its own members and

retainers. In such circumstances it would be fatally stultifying to put forward as a candidate a member of the Clinton family, against which course a similar charge had been and could again be made.

Both Clinton and Spencer were therefore ruled out as ineligible under the rule of political expediency, and at the suggestion, if not the dictation, of the former the choice of the caucus fell upon a man whom a day before nobody had thought of as a candidate. This was Daniel D. Tompkins, a young man who, in the Constitutional convention of 1801, had stood against the spoilsmen's interpretation of the powers of the Council of Appointment, who had been elected to Congress, and who had been appointed a Justice of the Supreme Court of the State, in which office his attractive personality had won him a multitude of friends. It seems probable that Clinton underrated his ability and force of character, and thought him neutral and pliable and thus easily controlled—in which Clinton was grievously mistaken. John Broome was renominated for Lieutenant-Governor. Sixty-five members of the Legislature participated unanimously in making these nominations and in issuing an address to the electors of the State in behalf of their candidates, in which address, it is worthy of note, not a single reason based on principle was given why Justice Tompkins should be preferred to Governor Lewis.

A few days later the Quids in the Legislature, concluding that the renomination of Lewis by the New York citizens' convention would better be confirmed, held a caucus, forty-five strong, renominated the Gov-

error, and named Thomas Storm for Lieutenant-Governor. The Federalists made no nominations and committed themselves as a party to neither side. Their vote was probably divided.

An acrimonious campaign ensued. The Quids loudly proclaimed that Lewis's candidacy was a revolt against bossism, and that Clinton had turned against him solely because he would not submit to his dictation. In support of this charge the Chancellor, John Lansing, entered the campaign with a public statement of his reasons for withdrawing from the campaign of three years before. It will be recalled that Lansing was then nominated for Governor by Clinton and his friends, but a little later declined to stand and was replaced on the ticket by Morgan Lewis. He now declared that a few days after his nomination he had been asked by the Clintonians to pledge himself to a certain line of policy, that he had refused to do so, and that thereupon he had been informed by Dr. Tillotson that DeWitt Clinton had made unfavorable comment upon him and had displayed letters from a Washington correspondent charging him with having intrigued with Burr. For these reasons, Lansing said, he concluded that his place as Governor would be made very uncomfortable for him by the Clintons, and he decided not to accept it. DeWitt Clinton and Judge Spencer at once denied these statements, and George Clinton, the Vice-President, wrote from Washington repudiating them so far as he was concerned.

Mr. Lansing retorted with further charges. He repeated the statement that George Clinton, then Gov-



ernor, had tried to exact pledges from him on the ground that some of his friends were doubtful of the Chancellor's political trustworthiness. Governor Clinton had also said that he himself was likely to be chosen Vice-President, that Mr. Lansing, if he became Governor, would have to retire from the Chancellorship, and that DeWitt Clinton would be a good man to appoint to the latter vacancy; to which the Chancellor had replied that in his opinion the senior judicial officer should be promoted to the Chancellorship. DeWitt Clinton replied to this with a heated denial that he had ever aspired to the Chancellorship, and further correspondence increased the bitterness of the dispute without getting any nearer to a settlement.

The result of the election was closer than that of three years before, but it was a sufficiently decisive defeat for Lewis. The vote was 35,074 for Tompkins and 30,989 for Lewis. The Clintonians won the Legislature by a considerable margin.

One more battle over appointments remained to be fought during Governor Lewis's administration. Brockholst Livingston had been promoted from the Supreme Court of New York to the Supreme Court of the United States, and a successor to him must be chosen. The Council of Appointment was much divided in opinion, one favoring Jonas Platt, another John Woodworth, a third Maturin Livingston, and the fourth William W. Van Ness, the brilliant young Federalist leader whom the Clintonians had charged the fusionists with intending to appoint as Attorney-

General. It was finally decided to postpone the appointment until after the election, for reasons of political strategy.

Three weeks before the end of his administration, on June 9, Governor Lewis called the Council together to make the appointment. He was himself inclined to favor his relative, Maturin Livingston, but he could not persuade the majority of the Council to commit such a folly. After much manœuvering and intriguing the choice fell upon Van Ness, who was then only thirty-one years old, one of the youngest men who ever held such a position.

## CHAPTER XIII

### A "MAN OF THE PEOPLE"

**D**R. JABEZ D. HAMMOND, in his unique and incomparable "Political History of the State of New York," with an apt touch of the classicism which had been so dear to writers and speakers in earlier years and which was still much cherished in his time, suggests a parallel between the story of the three great factions of New York and that of the Roman Triumvirs, in which Burr plays the part of Lepidus, the Livingstons that of Antonius, and the Clintons that of Augustus. The likeness is interesting. Antonius Livingstons and Augustus Clintons united to destroy Lepidus Burr, with no love for each other save in their common enmity to him; and then the Augustus Clintons in turn destroyed the Antonius Livingstons and reigned, as they fondly thought, supreme. There, however, the parallel ends and a great contrast begins. For Augustus Cæsar vanquished Antonius by his own leadership and mastery, and thereafter reigned unchallenged. But the Clintons, or, rather, DeWitt Clinton, who had become the real head of the house, overthrew the Livingstons through the agency of Daniel D. Tompkins and thereby raised up against himself a far more formidable opponent than any he had destroyed. He imagined that in Mr. Tompkins he would have a facile and subservient tool. Instead, he found for years his master.

In this incident DeWitt Clinton made the second of the major errors of his distinguished career. The first had been his injection of the spoils system into the operations of the Council of Appointment, which, as we have seen and still shall see, reacted against himself with disastrous force. Now he reckoned that as a party "boss" he could control as puppets those whom the party elected to office. From these two infirmities of a noble mind date the twin systems of bossism and spoils which for a century thereafter dominated the politics of New York.

This second blunder of Clinton's was not only an error in morals but also a grievous misjudgment of men, or of a man. It seems at this distance almost incredible that he should have supposed Daniel D. Tompkins to be a man who could be bent to the will of any other; for, young as he was, Mr. Tompkins had on more than one occasion shown the possession of singular independence and resolution, inherited from his father, one of the most indomitable spirits—albeit in a humble sphere—of the Revolution; and, amiable and urbane as he was, he had made it known that within the glove of velvet there was a hand of steel. The sequel was that the election and accession of Governor Tompkins marked the beginning of DeWitt Clinton's greatest fight for political life.

It will be well to fix in mind a picture of the two great rivals, antagonists in perhaps on the whole the greatest political duel in the history of the State. Genealogically they were contrasted, Clinton having "claims of long descent" from the aristocracy not only



of the State and Colony, but of the old country, while Tompkins, son of a modest farmer, was essentially a "man of the people." Physically, Clinton was of medium stature but of unusual breadth of shoulder, somewhat saturnine of countenance, beetle-browed, with balefire eyes and bulldog chin, the face of an autocrat and a fighter. Tompkins was much above the usual height, his figure a compound of Hercules and Antinous, his face singularly handsome, open, winning in its smiling grace. Both faces were true indices of temperament. Clinton could doubtless be most agreeable to his friends, but to strangers he was reserved if not actually repellant. Tompkins was always affable, genial, and inviting, though never lacking in dignity. Clinton, we may assume, self-centered in arrogant pride, imagined severity such as his own to be indispensable to strength, and therefore mistook Tompkins's geniality for weakness—a fatal error of estimate.

The stage setting of the drama was worthy of the two protagonists. Another war was obviously impending. The tragedy of the "Chesapeake" had occurred, throwing the country, as Jefferson said, into such a state of excitement as it had not known since Lexington. It was on the very day of Governor Tompkins's inauguration that the stricken ship made her way back into Norfolk harbor. There quickly followed the British orders in council and Napoleon's Milan decree, and then the embargo. Of course the embargo was a great hardship to the commerce of New York, and on that account DeWitt Clinton instantly and impulsively condemned it, and his uncle, the Vice-President, followed his

example, writing and speaking against Jefferson's policy with results disastrous to himself, as we shall see. Cheetham, editor of Clinton's *American Citizen* newspaper, of course trained against the embargo the bitterest batteries of his aggressive pen.

Such was the situation when, on January 26, 1808, the Thirty-first Legislature assembled at Albany, with an overwhelming Democratic majority. Dr. Alexander Sheldon was reëlected Speaker of the Assembly. Daniel Rodman was elected Clerk of the Assembly over G. Y. Lansing, the former Clerk, by a vote of sixty to twenty-one, that division indicating the respective strengths of the two parties.

The Governor's address was practically a declaration of war between him and DeWitt Clinton. It began with a detailed and forceful consideration of the "Chesapeake" incident and the embargo, and in respect to the latter it directly antagonized the attitude to which Clinton had committed himself. Recognizing the great hardships of the embargo, the Governor argued that it was yet a patriotic duty to endure them as a temporary expedient in order to avert, if possible, something worse, namely, embroilment in the European war. Realizing, however, the danger of hostilities in spite of this immeasurable sacrifice to avoid them, the Governor urged prompt and generous coöperation with the Federal government for the better defense of the city and port of New York, and also for the defense of the northern and western frontiers of the State; to which appeal the Legislature responded with appropriations for those purposes, for the construction of a powder

magazine and an arsenal in New York, and for the purchase of ordnance, arms, and ammunition. The Governor announced that the State's quota of 100,000 men in the organized militia had been completed, and that thousands more had offered themselves for the service. The more adequate compensation of Judges and the encouragement of agriculture, the arts, and popular education were the concluding topics of an eminently statesmanlike address.

The sentiments of the address with respect to the embargo were received by the Legislature with approval so cordial that even Clinton could not venture to dissent. Accordingly, in the twinkling of an eye, he reversed his attitude and gave to the embargo a support as hearty as his opposition had been severe. This he did, apparently, without consulting or even warning either his uncle, the Vice-President, or his loyal editor, Cheetham, leaving them to follow him with the best grace they could. It was not at all surprising that Cheetham resented what he considered betrayal by the leader whom he had faithfully served, thinking that Clinton might at least have taken him into his confidence in the matter. He showed his resentment by practically breaking with Clinton and persisting in opposition to the embargo, thus aligning himself with the Federalists against the Jefferson administration.

For a time, in the matter of appointments, Clinton seemed to be triumphant. A new Council of Appointment was elected, consisting of Benjamin Coe from the Southern district, Peter C. Adams from the Middle, John Veeder from the Eastern, and Nathan Smith from



the Western district; and it promptly set to work to turn out the Livingstonians and to fill their places with Clintonians. First of all DeWitt Clinton was restored to his place as Mayor of New York in place of Marinus Willett. Then Elisha Jenkins was made Secretary of State in place of Dr. Tillotson, and Pierre C. Van Wyck was made Recorder in New York in place of Maturin Livingston. Sylvanus Miller was restored to the Surrogateship in New York in place of Ogden Edwards. Many other such changes were made on the very first day of the Council's meeting. Joseph C. Yates, supported by Clinton, was appointed a Justice of the Supreme Court to fill the place formerly filled by Governor Tompkins. Matthias B. Hildreth was made Attorney-General in place of John Woodworth, who had been a supporter of Governor Lewis. It should also be noted that on March 20 Martin Van Buren was appointed Surrogate of Columbia county, thus making his first appearance in the public life in which he was destined to be so prominent a figure. Throughout the State there was made a pretty "clean sweep" of all officials who were not approved by Clinton. The Legislature also applied the same rule to the one State office under its control. It removed Abraham G. Lansing, a most estimable official, from the office of State Treasurer, and filled his place with David Thomas, formerly a Representative in Congress.

There can be little doubt that Governor Tompkins disapproved this indiscriminate spoilsmanship. But he realized the futility of attempting to check it. He had in the Constitutional convention manfully opposed



the pernicious interpretation of the powers of the Council of Appointment upon which Clinton had insisted, but he had been defeated in that stand and there was no recourse but to acquiesce in the result and bide his time.

The Legislature at this session received through the Governor a message from President Jefferson dated December 10, 1807, in reply to an address which the preceding Legislature had sent to him on March 13, 1807. The Legislature had urged him to be a candidate for a third term in the Presidency, and his reply was a statement of his reasons for declining to do so. "That I should lay down my charge at a proper period," he wrote, "is as much a duty as to have borne it faithfully." Referring to the danger that a too protracted tenure of office might degenerate into an inheritance, he added: "I should unwillingly be the person who, disregarding the sound precedent set by an illustrious predecessor, should furnish the first example of prolongation beyond the second term of office."

The Legislature adjourned on April 11, after directing that its successor should meet on November 1 following to appoint Presidential Electors. The spring elections followed, and in the campaign the foremost issue was the purely national question of the embargo. On this the Federalists rallied in increased strength and made some gains in the Legislature, though the Democrats retained a strong majority.

Meantime a greater game of politics was being played than that of the State election. A new President of the United States was to be chosen, to replace Thomas

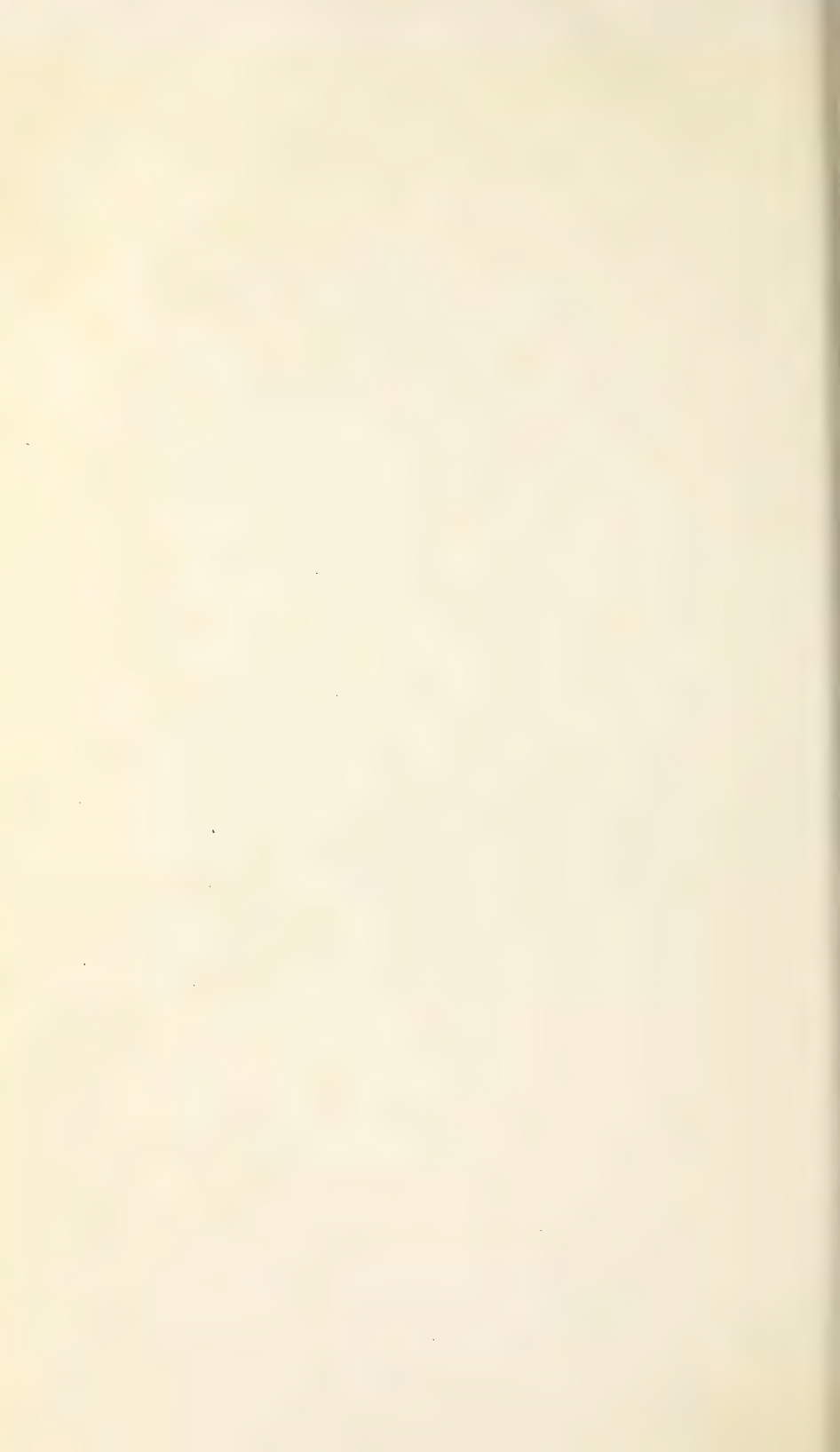
Jefferson on March 4, 1809, and it had long been planned and confidently expected by the Clintonians that George Clinton would be the man. Apparently the succession of the Vice-President had been established as an unwritten precedent. Adams had succeeded Washington, and Jefferson had succeeded Adams. Therefore Clinton should succeed Jefferson. For months DeWitt Clinton publicly urged such promotion of his uncle. Unluckily, he did so not alone on the ground of precedent but also on that of opposition to the "Virginia dynasty." He pointed out that Virginia had had two of the three Presidents and had filled the office for sixteen years out of twenty, and urged that it was time that New York, by this time second to only Virginia in population, and a very close second, should supply a President.

Such tactics on DeWitt Clinton's part aroused hostility in Virginia and assured the defeat of his uncle. A year or two before attention had been called by a writer in the *Enquirer* of Richmond, Virginia, to the growing power and apparently boundless ambition of DeWitt Clinton, who was a State Senator, member of the Council of Appointment, and Mayor of New York, and it was suggested that his influence in national politics should be combated. Those circumstances were now recalled, and in addition it was recalled that both George Clinton and DeWitt Clinton had at first condemned Jefferson's embargo policy. It was therefore determined to break the precedent. The usual caucus of Democratic members of Congress was called, to nominate a candidate, but it was called in a some-



DANIEL D. TOMPKINS

Daniel D. Tompkins, 5th governor, 1807-17; born in Westchester county, N. Y., June 21, 1774; lawyer; delegate constitutional convention, 1801; member of assembly; justice supreme court; resigned, June 9, 1807 when elected governor; elected vice-president United States, 1816; reelected vice-president, 1820; died on Staten Island, June 11, 1825.





what unusual way, hastily and without the knowledge of the Vice-President. At this caucus James Madison was nominated for President and George Clinton was again named for Vice-President.

This gave great umbrage to Clinton and his friends, and also to James Monroe and his friends, he having cherished an ambition to be a candidate, and they went so far as to try to impeach the regularity of the caucus on the ground that it had been attended by only 89 of the 139 Democratic members of Congress. Still, George Clinton did not refuse to let his name stand as the Vice-Presidential candidate. For a time DeWitt Clinton seems to have meditated a fusion with the Federalists, who were in a receptive mood for such an arrangement. Had there been a combination of the followers of Clinton and Monroe and the Federalists, upon a good candidate, it would probably have been successful and Madison would have been beaten. But while the Federalists waited the dissenting Democratic factions wrangled. The supporters of Clinton looked askant at Monroe because he was a Virginian, and Monroe's friends declared that George Clinton was too old and too infirm to be President. So in the end the Federalists nominated a ticket of their own, consisting of Charles Cotesworth Pinckney, of South Carolina, for President, and Rufus King, of New York, for Vice-President, and all hopes of a fusion against Madison were ended.

Having lost this opportunity, DeWitt Clinton, with a strange lack of political shrewdness, made matters worse for himself by trying to carry the fight into the

Legislature and by insisting that Presidential Electors should be chosen who would vote for George Clinton for President. This provoked an open breach with Governor Tompkins, who openly opposed such a course. It would, he argued, exhibit and intensify an unfortunate dissension in the ranks of the Democratic party, it would offend and antagonize Mr. Madison and thus impair the influence of New York in the national councils, and it would do George Clinton no good, since it was morally certain that Mr. Madison would be elected. This was perfectly sound from either a partisan or a patriotic point of view. But DeWitt Clinton would have none of it. Indeed, he was all the more confirmed in his own way through wrath at Governor Tompkins for daring to disagree with him. The result was that it was finally agreed to appoint Electors without instructing them for whom to vote, leaving them to vote not unanimously as a body but according to their individual preferences.

The Thirty-second Legislature met on November 1, 1808, and as Dr. Sheldon had failed of reëlection James W. Wilkin was chosen Speaker of the Assembly by a vote of sixty against forty-five for Mr. Van Rensselaer, the Federalist candidate, these figures indicating the respective strengths of the parties. The Governor's address was entirely non-partisan in tone in its reference to the choice of Electors, and was chiefly devoted to other topics of State interest. Especially did he urge revision of the criminal laws, so as to lessen the number of offenses for which capital punishment was prescribed and to substitute imprisonment at hard labor

for flogging in cases of larceny and other offenses—wise and humane recommendations, to which unfortunately the Legislature did not respond. On November 7 the Legislature chose Presidential Electors, and the next day it adjourned until the third Tuesday of January, 1809.

Ambrose Spencer was chosen at the head of the Electoral College of the State, but he proved in the end to be the leader of a minority of it. He and five others voted for George Clinton for President, and three of them voted for James Madison and three for James Monroe for Vice-President. All the rest voted for Madison for President and for Clinton for Vice-President. The result of the national election was that for President 122 votes were cast for Madison, 47 for Pinckney, and 6 for Clinton; and for Vice-President, 113 for Clinton, 47 for King, 9 for John Langdon, 3 for Madison, and 3 for Monroe. The judgment of Governor Tompkins was vindicated. The casting of New York votes for Clinton for President had done him and the State more harm than good, and it was obvious that if all the New York votes had been cast for him the result would have been the same.

These proceedings made DeWitt Clinton the storm center of New York and indeed largely of national politics. He had made enemies on every side. His opposition to Madison had increased the resentment which that statesman had long felt toward all the Clintons for their opposition to the Constitution. Clinton was suspected and openly charged with being insincere in his professions of support of Jefferson, since, while he

had recanted his original opposition to the embargo, he had sought and gained a renewal of his intimate friendship with Cheetham, who remained as hostile as ever to that policy. For this same reason he was deemed disloyal to Governor Tompkins, since the latter was fully committed to support of the Jeffersonian policy. The Livingstons and the friends of Lewis were bitter against him, and so were all who had formerly followed the fortunes of Burr. The Martling Men in New York City vied with the others in detestation and denunciation of him.

Had these various factions been able to agree among themselves, and to select a common leader, Clinton's political shrift would have been short. But just as Clinton himself and the other dissenting Democrats had failed to unite with the Federalists in opposition to Madison, so now Clinton's foes failed to unite against him. Governor Tompkins might have made himself their leader, but he refrained, although his father-in-law, Mangle Minthorne, one of the richest and most influential citizens of New York, was the leader of the Martling Men and openly manifested the purpose of politically destroying Clinton. The spirit of hostility to Clinton which prevailed in New York City was strikingly shown in an article which appeared in the *Public Advertiser*, an anti-Clinton paper, probably under the control of Minthorne, in January, 1809, shortly before the holding of a mass-meeting of the Democratic party in that city in support of the national administration. This article stated that "an abominable intrigue" was said to be in contemplation, to make



DeWitt Clinton chairman of that meeting. "A measure so obnoxious would destroy the harmony of the meeting." If Clinton were proposed for the place, he would be rejected with disdain. There could be no objection to his supporting the administration provided he had renounced his errors, especially his connection with Cheetham and with the three New York members of Congress who had voted against the embargo. In the existing circumstances his selection as chairman of the meeting "would be viewed as an insult to the public understanding." This article was denounced by Clinton's Albany organ, the *Register*, as a base libel, since it was publicly known when that article was written Clinton would not even attend the meeting, for the reason that he would at that time be in Albany to take his seat in the State Senate.

The second and regular meeting of the Legislature began on January 24, 1809, and continued until March 30, when it was adjourned without day. The transactions were chiefly of a routine character, and while a new Council of Appointment was elected, consisting of Jonathan Ward, James G. Graham, Isaac Kellogg, and Alexander Rhea, few changes in office occurred. The "sweep" had been made so thoroughly the year before that nothing now remained to be done.

The interest of the session centered upon DeWitt Clinton's efforts to rehabilitate himself as the party leader. To that end, only four days after the opening of the session he introduced a series of resolutions elaborately approving the embargo, approving Jefferson's administration, and expressing confidence in and

pledging support to the coming administration of Madison. In support of these he made a long, detailed, and very able speech, chiefly devoted to the embargo. He reviewed the story of the troubles between America and the European belligerents, insisted that it was no longer possible to submit to their infringements upon our rights, and argued that the embargo was the best possible means to which our government could resort. In conclusion, with all the bitterness of invective of which he was an accomplished master, he condemned the Federalists for their opposition to the embargo, declaring that, like Milton's Fallen Angel, they thought it "Better to reign in hell than serve in heaven."

The Federalists met the challenge. They were respectable in numbers, and among them were some of the ablest men in the State. Their leader in the Assembly was Abraham Van Vechten, who had declined Jay's offer of a place on the Supreme bench and who was probably the most eloquent orator and most powerful debater in the State since the assassination of Hamilton. It was fortunate for Clinton that he and Van Vechten were in different houses of the Legislature, for while in intellectual gifts the two men would have been fairly matched, Clinton, with his quick, stormy temper and violent eruptions of heedless anger would have been at a hopeless disadvantage before the always cool, imperturbable, self-contained Van Vechten with his unrivalled gift of sarcasm and ridicule. Van Vechten had in a high degree the faculty which John Quincy Adams supremely displayed, of making his opponents lose their tempers while never losing his own. A worthy

colleague of Van Vechten's was Daniel Cady, one of the foremost lawyers of the State, who closed his distinguished career on the bench of the Supreme Court; whose daughter, Elizabeth Cady Stanton, was long eminent as the leader of the cause of woman's political emancipation; and whose name, bestowed as the baptismal name of an eminent jurist of our own day, was always used by the latter in the abbreviated form, "D-Cady," on the ground that nobody could be quite worthy to bear it in full! Still another able Federalist was Jacob R. Van Rensselaer, who had been the Federalist candidate for Speaker of the Assembly. Opposed to them, on the Democratic side, were Nathan Sanford, who was afterward Chancellor; Roger Skinner, afterward a United States Judge; Obadiah German, afterward United States Senator; D. L. Van Antwerp, and other men of ability.

When, therefore, the Federalists introduced resolutions condemning the embargo and flatly opposing Clinton's resolutions at almost every point, a battle royal was assured. The outcome was never in doubt, of course, because the Democrats had a strong majority and the party feeling was so strong that they were bound to support the administration regardless of the merits of the case. But neither were the merits of the debate ever in doubt. Clinton and his friends were no match for Van Vechten and Cady, and the object lessons of financial depression, stagnated commerce, popular distress, and the disappearance of American shipping from the seas once whitened by its sails, were unanswerable. In the Senate Clinton's resolutions were adopted with-

out the formality of a roll-call, and in the Assembly they were passed by a vote of sixty-one to forty-one; but at the April election, a few weeks later, the Federalists swept the State!

This startling result was due in great part to the powerful arguments of Van Vechten, Cady, and Van Rensselaer, who had conducted the debate in the Legislature not with any hope of getting their resolutions adopted but for the sake of the effect of their widely published speeches upon the voters of the State. It was also due to the fact that because of the embargo the price of wheat had fallen from two dollars to only seventy cents a bushel, and other values had been similarly affected, meaning heavy losses and widespread ruin to the people. For these economic reasons many of the followers of Burr and of Lewis supported the Federalist candidates. The result was that while the State as a whole showed a small Democratic majority, only 731, the Federalists elected a substantial majority in the Assembly for the first time since 1799. The geographical distribution of of the Federalist vote was significant. That party carried the Eastern and Western Senatorial districts by respective majorities of 534 and 391. Those were the parts of the State which had largely been settled by immigrants from New England, bringing with them, of course, Federalist principles. On the other hand the Democrats carried the Southern and Middle districts by majorities of 840 and 816, where the influx from New England had been comparatively small. As the Senatorial districts were thus evenly divided between the two parties, the Democrats felt sure that the Fed-



eralist Assembly in the new Legislature would have to elect two Democrats as well as two Federalists to the new Council of Appointment, in which case the deciding vote of the Governor would prevent the turning out of Democrats and the appointment of Federalists in their places—a hope which, as we shall see, was doomed to disappointment.

Following the elections of April, 1809, political activity was maintained at fever heat. Both parties were chagrined and indignant over the repudiation by the British government of the Erskine settlement with the United States, the Democrats charging it against the British government as a piece of bad faith, and the Federalists charging the Madison administration with negotiating for political effect with an agent whom it knew to be unauthorized. Indeed, as the announcement of that "settlement" occurred on the very eve of the New York elections, there were those who accused the administration of making it as a political trick for the influencing of the election. Of course none of these violent charges were well founded, though there is little doubt that had it not been for the timely announcement of the spurious settlement the Federalists would have carried all four Senatorial districts of the State. Political activity in the press was also maintained. Henry Croswell, who had been indicted for libel on President Jefferson, removed his *Balance* from Hudson to Albany, as the *Balance and New York Journal*, and made it the organ of the Federalists at the State capital. Because of its continued opposition to the embargo, Cheetham's *American Citizen* was repudiated by the

New York Democrats and fell into decline, and the *Columbian* was established in its stead as the Clintonian organ, under the editorship of Charles Holt, who under the Adams administration had been indicted for sedition in Connecticut.

These activities were preliminary to the campaign for the Governorship, which was to be fought in 1810 and which was formally begun in good season. The Federalists made the first move. A large party meeting was held by them at Albany on January 5, 1810, over which Abraham Van Vechten presided and at which Jonas Platt, of Whitesborough, was nominated for Governor. At a later date Nicholas Fish was nominated for Lieutenant-Governor. Mr. Platt was a man of high character and a lawyer of fine attainments, and was one of the foremost citizens of what was then the western part of the State. He had been elected a State Senator from the Western district in April, 1809. The Democrats postponed their nomination until after the meeting of the Legislature, but it was a foregone conclusion that they would renominate Messrs. Tompkins and Broome, as they did at a legislative caucus on February 5.

The Thirty-third Legislature met on January 30, 1810, and the Federalists elected General William North, of Duanesburg, Speaker of the Assembly over William Livingston, the Democratic candidate, by a vote of fifty-seven to forty-three, these figures indicating the respective strengths of the parties. The Governor's address was largely devoted to national and international affairs, which were discussed in a dignified

non-partisan manner. Attention was called to the desirability of another revision of the statutes, as ten years would have elapsed at the next session since such a work was performed. The Legislature took favorable action upon the suggestion, and the result was the Revised Statutes of 1813. The Governor also urged fuller support of public education, with the result of prompt legislation to that end. The Legislature adjourned without day on April 6.

The most important act of the Assembly was the election of a new Council of Appointment, upon the composition of which depended the official patronage of the State. We have seen that the Democrats expected the Council to be equally divided between the two parties, giving the Governor the casting vote in their favor. Such indeed was apparently the result. The Assembly elected Daniel Parrish of the Eastern district and Amos Hall of the Western district, both Federalists; and Robert Williams of the Middle district and Israel Carl of the Southern district, both Democrats. There were no Federalist Senators from these latter districts, and the election of Democrats was therefore inevitable. Mr. Carl was a staunch and loyal Democrat, and a man of undoubted integrity. Mr. Williams had been elected as a Democrat, and had formerly been successively allied with the Burr, Lewis, and Clinton factions. At this time he was supposed to be a Clintonian. The Democrats regarded him as a trustworthy member of their party, and the Federalists viewed him in no other light.

Immediately upon his election to the Council of Appointment, however, he abandoned the party which had elected him, and voted with the Federalists on every appointment. There is no reason to suppose that he was bribed to do this, or that there was any corrupt bargain between him and the Federalists, who were probably as much surprised at his course as were the Democrats. It is true that his son-in-law, Thomas J. Oakley, was appointed Surrogate of Dutchess county in place of James Talmadge, but Oakley was a man of high ability and unblemished character, fully worthy of the appointment and quite incapable of being a party to a treacherous "deal." But while they did not tempt Williams to play the traitor, nor reward him for so doing, the Federalists would have been more or less than human if they had not profited from it. They could not forbid him to vote for their candidates, nor could they be expected to refrain from nominating men because he was sure to vote for them. The result was that the Federalists had complete control of the Council of Appointment, and on the very principle which DeWitt Clinton had insisted upon—and which Tompkins had more wisely opposed—they overruled the Governor and turned out every Democratic officeholder of consequence in the State. At the very first meeting of the Council, DeWitt Clinton was removed from the lucrative Mayoralty of New York City, and Jacob Radcliff, one of the foremost chancery lawyers of his day, was appointed in his place. J. Ogden Hoffman was made Recorder of New York, Cadwallader D. Colden District Attorney, and John W. Mulligan



Surrogate. Abraham Van Vechten was made Attorney-General of the State, Daniel Hale Secretary of State, and Theodore V. W. Graham Recorder of Albany. At subsequent meetings similar changes were made of Judges, Surrogates, County Clerks, Sheriffs, District Attorneys, and Justices of the Peace throughout the State. "Let no Democrat remain" was the order of the day. Meantime the Legislature had similarly dealt with the one State office under its control, reappointing Abraham G. Lansing State Treasurer—a most worthy act.

It is gratifying to record that, whatever his motives had been, Williams received the worthy reward of his treachery to his party. The Democrats would have nothing more to do with him, but stigmatized him as a "Judas," while the Federalists, although they profited from his treachery, were equally cold and contemptuous toward him. He served to the end of his term, in obscurity and contempt, and then disappeared from the public view.

It should be added that during this session of the Legislature there were for the first time acrimonious partisan contests over the replies of the two houses to the Governor's address. The Senate, being Democratic, appointed a select committee which drafted a reply entirely sympathetic with the address. The Federalist minority moved a substitute, strongly disagreeing with the address, and a vigorous debate ensued, which ended with the adoption of the Democratic draft. In the Assembly a Federalist committee drafted a reply which went to the very limit of decorum in criticising the

national policies which the Governor had supported and in condemning the course of the national administration. The Democrats moved a substitute favorable to the administration, and there followed a debate almost comparable with that over DeWitt Clinton's resolutions of the year before, and conducted largely by the same men. The result was, of course, the adoption of the hostile Federalist reply. In his acknowledgment of this rampant and rampageous message from the Assembly, Governor Tompkins very wisely and worthily said:

"Being desirous that the intercourse between the different branches of the government should be conducted with respectful urbanity and dignified decorum, and fully determined that no consideration shall ever induce me to depart from that line of conduct, it cannot be expected that I should notice all the expressions contained in this answer of your honorable house."

He then reminded the Assembly that it had been his official duty to impart to the Legislature his views of national affairs, and that he had done so in good faith. Convinced that the national administration had been animated by the purest patriotism, he could not subscribe to either the justice or propriety of the Assembly's intimations to the contrary. Finally, he deprecated the inculcation of distrust and suspicion, and urged a union of exertions in support of the national government "to enable it to repel with energy the aggressions of every foreign power." It was the reply of a statesman and patriot, as well as of a prudent and far-seeing politician.

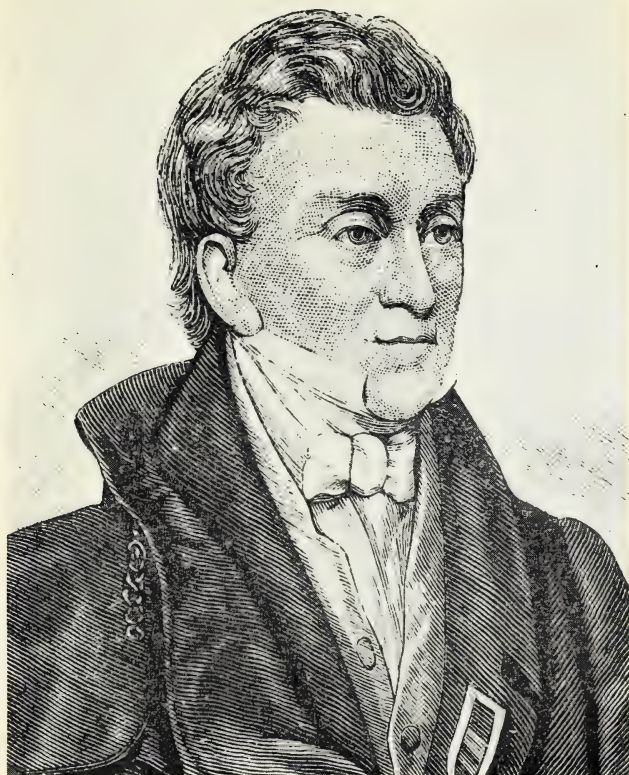
This controversy was, like that of the year before, intended chiefly for effect upon the voters of the State at the coming election for Governor. It was Senator Platt, the Federalist candidate for Governor, who put forward the substitute reply to the Governor's address which was rejected by the Senate. He knew that its rejection was certain, but the debate gave him an opportunity to make some powerful campaign speeches in the Senate. He had effectively answered DeWitt Clinton in the former debate, and he expected similarly to prevail with the electorate on this occasion. His colleague on the ticket, Nicholas Fish, had been a gallant soldier in the Revolution and a friend of Washington and Hamilton, and was one of the foremost residents of New York City, where he was recognized as the leader of the opposition to that Tammany Society—later known as Tammany Hall—which was already dominant in Democratic politics in that municipality. His son, named after his close friend Hamilton, was Secretary of State in the administration of President Grant.

Platt, however, overreached himself. His proposed reply to the Governor's address was not so violent in tone as that of the Assembly. But it gave his opponents an opportunity to accuse him of partiality toward the British, and even—though of course this was exaggeration—of taking England's side against his own national government. It was not DeWitt Clinton who made the most effective attack upon Platt, but John Tayler, Senator from the Eastern district. Tayler was a veteran of the Revolution and of preceding wars, who was familiar with the compacts between the British and

the Indians and had personally seen many horrors of the resulting Indian warfare. He was an orator of much dramatic power, too, and this he employed with great effect against Senator Platt, dwelling upon the horrors of Indian massacres, charging the responsibility for them upon the British government, and then declaring that the Federalists were not only partisans of that government but actually numbered in their ranks former tories who had personally participated in the outrages.

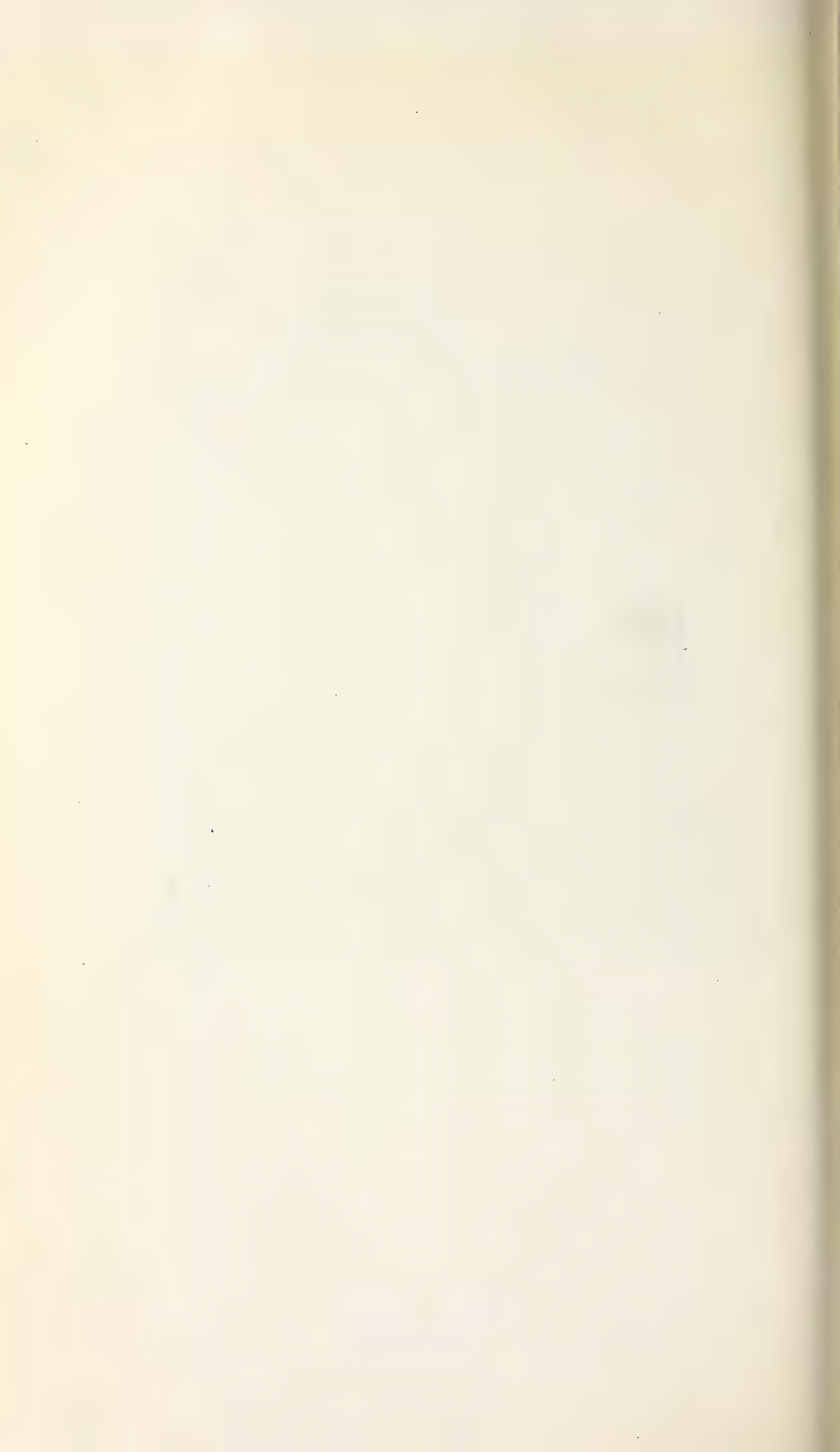
That was too much for Daniel Parrish, Platt's colleague and friend, to endure, and he made a speech in reply which was courageous in a high degree and was marked with perfect truth and candor, repelling the quite unwarranted insinuations which Tayler had made. This speech should have had the more weight for the reason that Parrish's father had been slain by Indians in the British service, and Parrish was therefore the last man to be suspected of partiality in that direction. But Tayler saw in it an opportunity for another and deadlier stroke. With far more audacity than either sincerity or good taste, he took the floor for a theatrical portrayal of the sufferings and death of the elder Parrish at the hands of the Indians, in which he did not hesitate to indulge in exaggeration and invention for the sake of effect, and then, dramatically pointing to Senator Parrish, exclaimed in his best tragedy tones: "And now, now, I am surprised, I am grieved, to see the son of that martyr, my beloved and venerated Revolutionary friend, pleading in this Senate the cause of his father's murderers!"

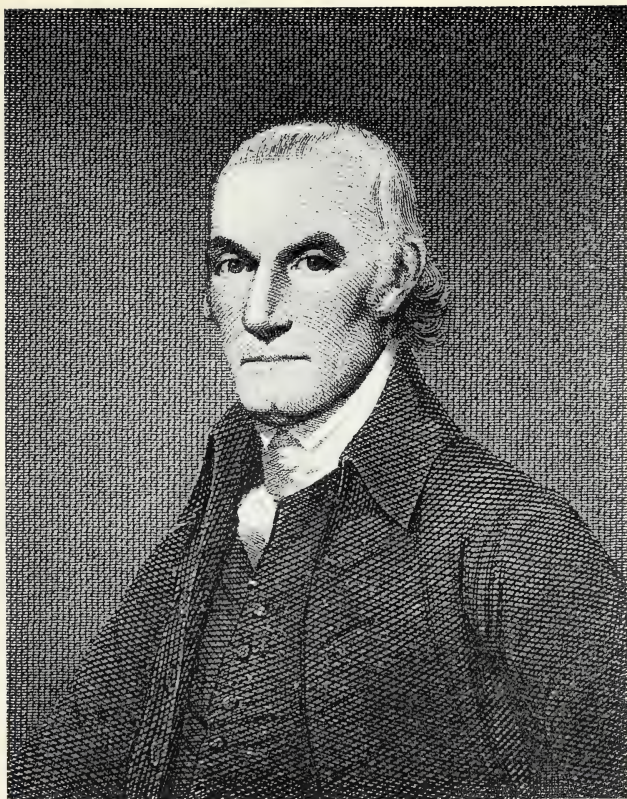




NICHOLAS FISH

Nicholas Fish, lawyer and soldier; born in New York City, August 28, 1758; served through the revolution; appointed adjutant general April, 1784; supervisor of revenue, 1794; alderman of New York City, 1806-17; died in New York City, June 20, 1833.





WILLIAM FLOYD

William Floyd; born in Brookhaven, L. I., December 17, 1734; prominent in ante-revolutionary movements; delegate to continental congress, 1774-77; signed the Declaration of Independence; member of state senate, 1777-78; again delegate to continental congress, 1778-84; again a state senator, 1784-88; elected to first congress and served from March 4, 1789 to March 3, 1791; in 1804 moved to Westernville, Oneida county; delegate to state constitutional convention, 1801; again state senator, 1808; died at Westernville, N. Y., August 4, 1821.





It was indecent, and it was untruthful. But it was effective. Senator Parrish naturally could not restrain himself. He made an angry reply, instinct with outraged justice. Before the murder of Hamilton the incident would have provoked a duel. But the mischief was done. Senator Tayler's utterly unwarranted aspersions were published over the State at a rate which Senator Parrish's reply could never overtake. A wave of anglophobia swept over the State. At the same time the repeal of the embargo aided the Democrats, and the desperate passion to regain the offices which they had lost through the treachery of their own man, Williams, roused them to make every possible effort.

With such spirits dominant, and with such appeals to passion presented to the electors, the campaign was conducted with a partisan zeal never before known in the history of the State. But after all, the decisive factor in it was Daniel D. Tompkins himself. Had DeWitt Clinton been the candidate, he would have been beaten. But Tompkins was a "man of the people." His genial humanity gave him a personal popularity such as no other candidate had ever enjoyed. His Democracy and his loyalty to the national administration were unimpeachable, yet he had never made himself offensive to the Federalists. His temperate and dignified attitude in the controversy with the Assembly had won him hosts of friends and commanded the admiration even of his enemies. His attitude throughout the campaign was above reproach. It was therefore due to his personality more than to any other cause that he was reelected. He received 43,094 votes to 36,484 cast for

Jonas Platt. With himself he carried into office a safe Democratic majority in both branches of the Legislature. The Democratic candidates were successful in all four Senatorial districts, and in the Assembly there was a Democratic majority of nearly two to one making a Democratic Council of Appointment certain. In New York City alone the Federalists made gains, there electing six Assemblymen to the Democrats' five. Among the Senators elected from the Middle district was Morgan Lewis, former Governor of the State.

## CHAPTER XIV

### CLINTON'S AMBITION

THE great victory of Governor Tompkins in his reëlection should logically have made him the most conspicuous figure in the Democratic party of New York, and one of the very foremost in the nation. But there was another to be reckoned with, more truculent, more ambitious, and less scrupulous, who had preceded Tompkins in prominence in public life and was destined to outlast him. This was DeWitt Clinton, who regarded as his own the Democratic victory which had been won not so much by him or because of him as in spite of him, and who now purposed to utilize its results in furthering his own personal and selfish ambition. That ambition was twofold. One part of it was to be absolute master and dictator of the Democratic party in the State of New York. The other was, to gain for himself the Presidency of the United States which he had vainly tried to secure for his uncle.

In the furtherance of this ambition he was confronted not alone with the opposition of the Federalist party but also with two powerful antagonists within the Democratic party itself. One of these was the national administration. He had already incurred the hostility of President Madison, bestowed upon him in return for his own toward Madison; and it was measurably intensified as it became more and more evident that

Clinton intended to put himself forward as a candidate in opposition to Madison's reëlection to a second term.

The other, and more active and violent antagonist, was Tammany Hall, as we may now call the faction in New York City hitherto known as Martling's Men. The two names were not, it is true, precisely synonymous. The Society of St. Tammany, or Columbian Order, had been founded in 1789 as a non-partisan, non-political, patriotic, and charitable organization, thoroughly democratic in character and therefore contrasting with the Order of the Cincinnati, which was regarded as aristocratic. Its membership included Federalists and Anti-Federalists, "Anglicans" and "Gallicans," Hamiltonians and Clintonians. But long before the completion of its first decade it was transformed into an intensely political and partisan body, anti-Federalist and therefore Democratic, but also strongly Clintonian. It transferred its meeting-place to the "Long Room" in Abraham Martling's tavern, and thus became closely associated and practically identified with "Martling's Men." For this radical change, which was assuredly not for the better, but which was the beginning of processes which in later change, which was assuredly not for the better but Aaron Burr was responsible. He was not, it is true, an officer or even a member of the Tammany Society. But his friends controlled that organization, and through them he utilized it to his selfish and corrupt ends.

By the time of which we are now speaking, Tammany had become a great power in the Democratic party in New York City—generally the dominant



power. This was owing to its thorough organization as a political "machine." It had a "leader" in every ward, and under him a leader in every district. It had a catalogue containing the name and address of every voter in the city, with a note of his political affiliation or inclination, and also of the influence—personal, social, business, church, or what not—which might most effectively be exerted upon him; and it was the business of every district leader to see to it that every voter was properly "approached" at election time and the most suitable "influence" was exercised upon him. The organization also maintained its original charitable purposes and practices sufficiently to win for it the gratitude and support of many poor people, whose rent it paid or whose larders it replenished at the psychological moment, just before election.

Tammany at this time concerned itself chiefly with local matters, paying comparatively little attention to State and still less to national politics. In its opposition to DeWitt Clinton, however, it reached out into State affairs, and also coöperated sympathetically with the Madison administration at Washington.

After the election of April, 1810, ensued a period of apparent quiet, though in fact it was one of exceptional activity beneath the surface, all parties and factions diligently preparing for the approaching conflict. An unexpected turn was given to affairs in August by the death of the Lieutenant-Governor, Mr. Broome, and plans were promptly laid by various aspiring politicians to secure the succession to him. Chief among these was DeWitt Clinton himself. It seemed strange, from one

point of view, that he should be willing and even eager to secure an office in which he would be subordinate to Governor Tompkins, whom he affected to regard with contempt. But the explanation was clear and convincing. For the furtherance of his political ambitions it was necessary for him to be at Albany in some official capacity. He had not ventured to seek election as a State Senator from New York, because the local opposition of Tammany, which might be fused with that of the Federalists, would probably defeat him. But as a candidate for the Lieutenant-Governorship he would be voted for—and against—by the whole State, and he counted on the great following which his uncle had in Ulster and other counties “up the State” to counterbalance the defection and hostility of Tammany in New York.

Before such an election, however, it was necessary for the Legislature to take action. The Thirty-fourth Legislature met at Albany on January 29, 1811, under Democratic control. Nathan Sanford, of New York, was chosen Speaker of the Assembly, and Stephen North, of Delaware county, Clerk. The Governor in his address dwelt largely upon the increasingly unsatisfactory and ominous character of the nation's foreign relations; he recommended provision for the election of a Lieutenant-Governor at the next election, in April, which the Legislature promptly made; he referred to the desirability of revision of the statutes, and of greater attention to the public school system; and he announced a forthcoming report from Commissioners on the project of canal connection between the Hudson River and

Lake Erie and Lake Ontario—a report which was presented on March 2 following, and which gave Clinton opportunity to secure the passage, on April 8, 1811, of a bill for internal improvements in the State which was the first real step toward the Erie canal. A bill was passed on April 9 authorizing the appointment of a commission which should report to the next Legislature plans for a comprehensive and permanent system of common schools; and on the same day the Legislature adjourned.

Meantime the spoils system went merrily on. The Assembly elected a new Council of Appointment the day after the opening of the session. This body consisted of Benjamin Coe, of the Southern; James W. Wilkin, of the Middle; John McLean, of the Eastern; and Philetus Swift, of the Western district. It was Democratic in political complexion, and it promptly proceeded to make a “clean sweep” of the offices, turning out all the Federalists whom its predecessor had appointed and filling their places with Democrats. Mr. Hildreth was reappointed Attorney-General; Mr. Jenkins, Secretary of State; John Van Ness Yates, Recorder of Albany; and DeWitt Clinton, of course, Mayor of New York.

This latter office was immensely valuable to Clinton as a political asset. He was himself a rich man and he had married a rich wife, while the salary and fees of the office amounted to probably as much as twenty thousand dollars a year, which in those days was equivalent to a hundred thousand dollars a century later. Thus he was enabled to live in luxurious style,

and to dispense benefactions and charities on a scale which the Tammany Society could scarcely hope to rival. If we reckon him to have been the last of the great family chieftains in New York State politics, we must credit him with having been the greatest of them all in the giving of *largesse* to his retainers.

He was the first eminent New York politician, also, to cater to the naturalized element in the citizenry, and especially to that Irish element which already was important and which in later years was dominant in New York City. To this element his appeal was peculiarly strong. He had, as a United States Senator, been active in securing the reduction of the naturalization period from fourteen years to five. This change enabled the Irish immigrants, who were flocking to New York, speedily to become citizens and thus be secure against deportation. He had also taken the lead in securing the repeal of the Alien and Sedition laws, under which Irish political refugees were in danger of being returned to British jurisdiction. The Irish Rebellion of 1798 had resulted in the flight of many Irishmen to this country. Among them was Thomas Addis Emmet, brother of Robert Emmet. Under the Alien and Sedition laws, not one of them was safe, and under the fourteen years' naturalization period their prospects were indeed unpromising. But when that period was reduced to five years, and meanwhile they were freed from the danger of deportation and their political asylum was made inviolable, conditions were radically transformed. Clinton never lost an oppor-



tunity of causing Irishmen to feel that they owed this happy change in their status to him, and in consequence he won their support to a far greater extent than Tammany Hall was able to do.

As soon as the Legislature provided for the election of a Lieutenant-Governor to succeed John Broome, in April, 1811, a caucus of the Democratic members placed DeWitt Clinton in nomination and issued an address to the people of the State in his support. Throughout the State generally this was well received. But in New York City, despite Clinton's influence as Mayor and as one of the richest and most bountiful citizens, there was an open revolt against it. Tammany took the lead. A public mass-meeting was called, at Martling's "Long Room," which that room could not contain but which overflowed into the City Hall Park. Teunis Wortman, who had been Clinton's aid in his fight with Burr, was foremost in convoking it. Mangle Minthorne, father-in-law of Governor Tompkins, was chairman, and John Bingham was secretary. Strong speeches were made, condemning Clinton's candidacy and condemning the man himself. Formal resolutions were adopted, expressing a belief that Clinton was no longer in sympathy with the principles and interests of the Democratic party and should no longer be considered a member of it; that he had opposed the election of Mr. Madison as President of the United States; and that he was attempting to establish in his own person a pernicious family aristocracy under which devotion to his person would be the exclusive test of merit and the only passport to promotion.

This meeting then nominated, as Clinton's rival for the Lieutenant-Governorship, Colonel Marinus Willett. It will be recalled that this officer had displayed distinguished merit in the Revolution, and had always commanded high esteem for his personal character. His political course had, however, been marked with inconsistencies and weakness. He had at one time supported Burr, had been a partisan of Morgan Lewis, and had been appointed Mayor of New York by the Council of Appointment which ousted DeWitt Clinton from that office. Still, his personal character was so high and his military reputation so brilliant that he was probably Tammany's best candidate. Tammany, or Martling's Men, also nominated Nathan Sanford, who had been Speaker of the Assembly, for State Senator from New York. This nomination was significant. For Mr. Sanford was at this time United States District Attorney. He had been appointed to that office by President Madison, and was in receipt from it of an income in salary and fees of more than thirty thousand dollars a year. It was scarcely conceivable that he would have accepted the Tammany and anti-Clinton nomination had he not been certain that such a course would be pleasing to the President. There were not a few at that time, Clinton among them, who saw in that candidacy proof of coöperation between Madison and Tammany Hall.

Clinton was not content with the nomination of the Legislative caucus, but sought to have it ratified by a citizens' meeting in New York as a counterblast to the meeting at Martling's. Such a meeting was formed at

the Union Hotel, with Arthur Smith as chairman and Hector Craig as secretary. But it was invaded and broken up, with much confusion and some violence, by a throng of the retainers of Tammany.

The Federalists declined some overtures for a fusion with Tammany, and nominated their own candidate in the person of Nicholas Fish, whose fine character and talents commanded the full support of that party. Indeed, not a few Tammany men voted for him, realizing that he was by far stronger as a candidate than Colonel Willett.

The campaign was intensely animated in New York City, but elsewhere throughout the State it was conducted in a perfunctory and languid manner, the success of the Democratic party being generally regarded as a foregone conclusion. In New York City, however, the result was astounding. Clinton, despite his prestige as Mayor and despite his bounties and his wooing of the Irish vote, received only 590 ballots. Colonel Willett, despite his war record and the energetic methods of Tammany, received only 678. But Nicholas Fish, the candidate of the discredited Federalists, received 2,044—a tribute to his personal worth and an indication of the disgust which many felt for the tactics of both Clinton and Tammany Hall.

Elsewhere in the State, however, Willett was practically ignored, and Clinton polled so large a majority over Fish as far more than to counterbalance the result in the city; and Clinton was thus handsomely elected Lieutenant-Governor. At the same time Sanford was elected Senator from New York, showing how

prudent it was for Clinton to avoid candidacy for that office, and also suggesting that, as already stated, many Tammany men, who voted for Sanford for Senator, voted for Fish for Lieutenant-Governor. In connection with the Senatorship it is to be noted that in this year the Democrats changed their method of making nominations for that office. Thitherto the Senatorial candidates had been chosen by caucuses of the Assemblymen from the respective Senatorial districts. Beginning in 1811 they were chosen at county conventions, delegates to which had been chosen at party primaries in the towns. The election was on the whole strongly in favor of the Democrats, who elected not only DeWitt Clinton to be Lieutenant-Governor but also 73 Assemblymen to only 39 secured by the Federalists. The Democratic strength was therefore increased above that in the preceding Legislature.

The Thirty-fifth Legislature met on January 28, 1812, with DeWitt Clinton presiding over the Senate as Lieutenant-Governor. Alexander Sheldon was returned to his old place as Speaker of the Assembly, and Samuel North was chosen Clerk. The Governor's address was largely devoted to the impending war with Great Britain, for which he urged that New York should make ample preparation. He recommended the adoption of measures for the gradual and ultimate abolition of human slavery, and the repeal of the law authorizing the transportation of slaves convicted of offenses; the amelioration of relations with the Indian tribes; the investigation of titles to the Onondaga salt



lots with a view to preventing private monopoly; reform of the public land system; and various other measures. The chief topic of an exceptionally long and important address was, however, that relating to the chartering and control of banking institutions, of which we shall hear more in a subsequent chapter.

The Legislature made a new Congressional apportionment of the State on the basis of the census of 1810, dividing it into 21 districts, of which 6 were to elect two Representatives each and the others one each, making 27 in all. The first election under this apportionment was to be held on December 15, 16, and 17, 1812, and subsequent elections on the last Tuesday of April and two days following it, in each even-numbered year.

The Canal commissioners reported that Congress had declined to grant national aid to the Erie canal scheme, but that the scheme was feasible and should be undertaken by New York alone if the aid of the nation or other States could not be secured. The Legislature thereupon continued the commission in existence, and authorized it to borrow not more than \$5,000,000 for the project.

On March 27 the Governor—for reasons which we shall hereafter see—prorogued the Legislature until May 21, and on June 19 it adjourned to meet on the first Tuesday of November, 1812, for the choice of Presidential Electors. Just before adjourning, however, acting upon a detailed report of Commissioners appointed to consider the matter, it enacted a statute permanently establishing a comprehensive system of

common schools, under which law the system was maintained for more than eighty years, or until a constitutional provision was adopted in 1894.

Amid all these transactions DeWitt Clinton was keeping his eye fixed upon the Presidency of the United States and was exerting his utmost efforts toward attaining that goal. Even bereavement was made to conduce to that end. On April 20, 1812, George Clinton died, "full of years and honor," and thus removed the last obstacle to his nephew's candidacy. DeWitt might—and might not—have hesitated to accept formal candidacy for the Presidency while his uncle was still Vice-President. It is probable that he would not have hesitated, or at any rate would not have refused, on that account, since long before his uncle's death he was an openly avowed candidate for the Democratic nomination against Madison, and in all probability would have had himself thus nominated by the Democratic caucus of New York Legislature long before April 20 if the Governor had not, on March 27, taken the extraordinary and unprecedented step of proroguing the Legislature. There were, indeed, many who thought and openly declared that the Governor took that step, not, as stated in his message, because of complications over bank charters, but chiefly for the sake of delaying such nomination of Clinton until a Congressional caucus could formally put Madison in the field as candidate for a second term and thus give him the double advantage of being nominated first and of being the regular party candidate.

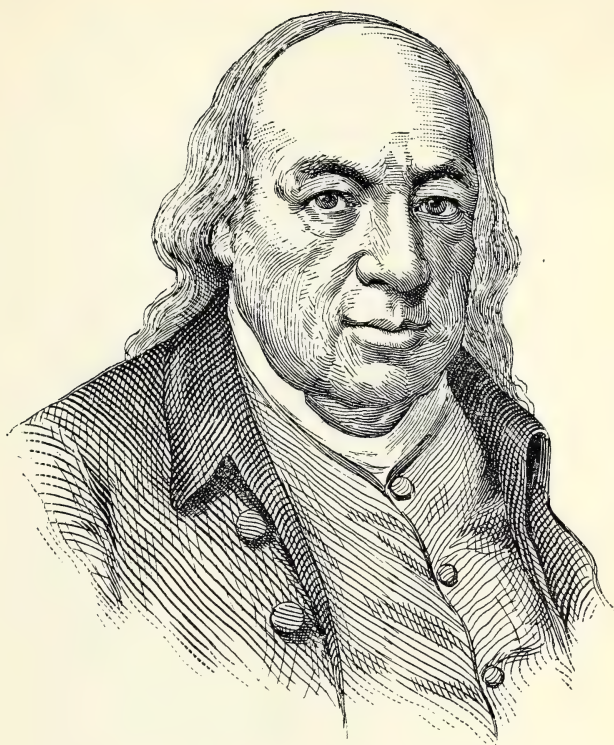
At any rate, it was while the New York Legislature was thus prorogued, on May 18, 1812, that a Congressional caucus of seventeen Senators and sixty-six Representatives formally renominated Madison. Three days later the New York Legislature reassembled, and eleven days thereafter a caucus of the Democratic members, comprising ninety out of ninety-five, put Clinton in the field as an opposition candidate. It must not be imagined that this action represented anything like the unanimous judgment or desire of the Democratic party of New York. On the contrary, many of its ablest members were outspoken in their disapproval of it. Governor Tompkins was himself cherishing Presidential ambitions, not for that year but for four or eight years later, but quite apart from that fact he regarded Clinton's candidacy as a mistake, if not worse. The Livingston family and its followers, still numerous and influential, were arrayed against it. Of course all the Tammany Society, or Martling's Men, were hostile. Erastus Root was outspoken against it. Ambrose Spencer and John Tayler acquiesced in it under protest. But Clinton, as was his wont, disregarded all opposition. It was one of his most serious defects as a political strategist that, in his own overweening pride, he invariably underrated his opponents.

Upon two bases he built the tall tower of his hopes of success. One was the prevalent resentment throughout the north against what had become known as the Virginia dynasty. During twenty-four years Virginians had filled the Presidency for twenty years, and it was now purposed to fill it thus for another four

years. That feeling was widespread, not only among Federalists but among Democrats as well, and Clinton hoped that it would prove sufficient to give him the votes of New York, all New England, and probably all States north and east of the Potomac River. The other hope was that the Federalists, who were still a factor seriously to be reckoned with, would adopt him as their candidate. In order to secure such support he began calling himself an American Federalist, and to declare his sympathy with their opposition to the war. He had begun by denouncing Madison for not being strong enough to wage the war with sufficient vigor, and he now promised the Federalists that if they would help to elect him President he would immediately make peace with Great Britain. He condemned the war as a southern device for ruining the commerce of New England.

Early in August Clinton sought a conference with John Jay, Rufus King, and Gouverneur Morris, with the purpose of organizing a Peace party composed of Federalists and Clintonian Democrats, with himself as its candidate for the Presidency. The meeting was held at Morris's home, at Morrisania, and was marked with a frank interchange of views. Clinton denounced Madison as incapable of being a satisfactory President, and declared upon his honor that he had completely and forever broken with him. Yet he did not deem it politic to make such a statement publicly, feeling that thus he might alienate many Democrats who through a more cautious policy might be retained among his supporters. The result of this conference





PIERRE VAN CORTLANDT, JR.

Pierre Van Cortlandt, Jr.; born in Van Cortlandt Manor, Groton, N. Y., August 29, 1762; studied law in the office of Alexander Hamilton; member of assembly, 1792, 1794-5; member of congress, 1811-13; died in Peekskill, N. Y., July 13, 1848.





MARINUS WILLETT

Marinus Willett, soldier, born in Jamaica, L. I., July 31, 1740; served in French and Indian wars and the revolutionary war, in the latter commanding the forces in the Mohawk Valley; sheriff of N. Y. county, 1784; mayor of New York, 1807; president of electoral college, 1824; died in New York City, August 22, 1830.





was indecisive. King had both before and after it no faith in Clinton's sincere devotion to anything but his own selfish advancement, while Jay felt a strong repugnance to any such bargaining as had been proposed. Morris had been associated with Clinton in the Canal commission and felt more kindly toward him than either of the others, but even he was not convinced of the propriety of making Clinton the Federalist candidate.

At the middle of September there was a meeting of several score representative Federalists, from all States north of the Potomac, to consider the question of a Presidential candidate. There was general agreement upon the impossibility of electing a straight-out Federalist, for which reason some, whose chief desire was to return the party to power by no matter what means, strongly urged a coalition with the Clintonians. Others, chief among whom was Rufus King, opposed such a course and advised the nomination of the best possible Federalist candidate. He would not be elected, but the party organization would be maintained, its principles would be confirmed, and its honor would be untarnished. To support Clinton would stultify the party, he insisted; and he recalled that Clinton had at first condemned the embargo and then approved it and confirmed his approval of it with a bitter tirade against the Federalists for opposing it. To elect him, he exclaimed, might prove to be placing a Cæsar Borgia in the Presidency in place of James Madison.

That was too extreme, to liken Clinton to Borgia, and the impassioned utterance reacted against King and the cause he was pleading. Harrison Gray Otis took advantage of it in pleading the other side of the case. He urged that the defeat of Madison was the thing most of all to be desired, since it would be a repudiation of his war policy and would lead to speedy peace. In the end he carried the day. The convention adopted resolutions opposing Madison in strong terms and advocating the election of DeWitt Clinton because of his possession of qualities which assured the country of more capable leadership.

At this time Clinton and his chief supporters felt confident of carrying New York, all of New England, New Jersey, and Delaware, and of getting at least some votes in Maryland, Ohio, and North Carolina. Even in Virginia they thought there was a possibility of securing a few. Pennsylvania was in doubt, but if it could be gained for Clinton his election would be assured. As a matter of fact, Clinton was not sure of his own State. The State administration was against him, and so was a large faction of the Democratic party, led by Erastus Root. The Legislature which was in November to choose Presidential Electors had been elected in April, and was much divided between Clinton and Madison. No fewer than twenty Democratic Assemblymen insisted that the Electoral College of the State should not be unanimous, but should be divided between Clinton and Madison in the same ratio that the Legislature itself was divided, which would mean at least one-third for Madison.

There now came to the fore a new figure in Democratic politics, destined to play a leading part. This was a young man named Martin Van Buren. He was the son of a Kinderhook tavern-keeper, who had studied law in the office of William P. Van Ness, the friend of Burr, and had later engaged in the practice of law on his own account at Kinderhook. After serving for a time as Surrogate of Columbia county, in April, 1812, he was elected to the State Senate, at the age of only thirty years, and would therefore take his seat for the first time when the Legislature met to choose Presidential Electors. Now, Kinderhook was a hotbed of Federalism, and the young man's teacher, Van Ness, as "Aristides," had been one of the fiercest foes of the Clintons and Democrats in general. Nevertheless, Van Buren was resolutely committed to the principles of Jeffersonian Democracy, and to the principle of party "regularity." That he was greatly enamored of Clinton does not appear. The men were so different temperamentally that close friendship between them would have been extraordinary. Nor does it appear that he regarded Clinton as sure of winning and so wished to be on the victorious side. But he was a strict party man, and since the party caucus had declared for Clinton he was for him.

We have said that Van Buren was very unlike Clinton. In manner he was his opposite—suave, plausible, ingratiating, politic; a natural manager of men. So it came to pass that when the Thirty-sixth Legislature met on November 3, 1812, this young man, entering that body for the first time, was immediately

accepted as the leader of the Clintonian Democrats. He commanded, too, the confidence and respect of the Madisonians, since he had never attacked the President or his policy. On the contrary, he had approved the embargo, he had approved non-intercourse, he had approved the war. He was a "straight party man," and if now he was opposing Madison it was not because he disapproved him but because he regarded Clinton as the regular candidate of the New York Democracy, whom it was his duty to support. To that shrewd, logical, and doubtless sincere attitude it was impossible to take exception. But we must add that Van Buren proceeded to promote Clinton's candidacy with every trick and intrigue at the hand of one of the most skillful political strategists New York has ever produced.

The result of his master-hand was quickly seen. The Legislature met for joint ballot, and 74 votes were cast for Clintonian Electors and 45 for Federalists, while 28 Madisonians, led by Erastus Root, refrained from voting. That assured Clinton the solid vote of New York. Had there been a Van Buren in Pennsylvania, Clinton would surely have won. But there was not, and that State went solidly for Madison. The outcome was that Clinton carried New York, all New England but Vermont; New Jersey and Delaware; and got five votes in Maryland. These gave him a total of 89. Madison got all the rest, a total of 128.

Clinton was thus defeated in his supreme ambition for the Presidency. Nevertheless, he was not without consolation. He had shown himself the strongest man



in the Democratic party in New York, able to command a majority of its votes and to win a large proportion of Federalist votes as well. For we must remember that the Thirty-sixth Legislature was half a Federalist body. The Assembly elected Jacob R. Van Rensselaer, a Federalist, Speaker by a vote of 58, to 46 for William Ross, Democrat, and one for Mr. Huntington, and by a similar vote elected James Van Ingen, Federalist, Clerk. In the Senate there were 9 Federalists, 4 Madisonian Democrats, and 19 Clintonian Democrats; in the Assembly there were 58 Federalists, 22 Madisonian Democrats, and 29 Clintonian Democrats. On a joint ballot, then, there were 67 Federalists, 48 Clintonian Democrats, and 26 Madisonian Democrats. The Federalists had a strong plurality, though not a majority. But the Federalists had a clear majority in the Assembly, and the Clintonians in the Senate. The vote by which Clintonian Electors was chosen was of course obtained by the casting of many Federalist votes for Clinton. Finally, these circumstances assured the choice of a Council of Appointment which would not disturb Clinton in the Mayoralty of New York, nor turn any of his friends out of office.

## CHAPTER XV

### CANALS AND BANKS

IT was an interesting coincidence that at the very time when he was making his campaign for the Presidency, in which he met with disappointment and defeat, DeWitt Clinton was engaged in another enterprise which was destined to bring him after years of strife far more distinction than he could probably have won in the White House. His interest in the inland transportation systems of the State of New York, and especially in canals, may be regarded as an inheritance. We have seen what attention George Clinton as Governor gave to the subject, and how frequently and earnestly he pressed upon the Legislature the desirability of providing for navigation between the various lake systems and the river systems—most of all, perhaps, between the Great Lakes and the Hudson. As a result of his policy, substantial progress was made in certain directions. But the greatest undertaking of all was left to be effected by DeWitt Clinton, through years of strife.

April 8, 1811, was an epochal day in the history of New York. On that day, as we have already seen, the Legislature passed an act appointing a commission to take into consideration all matters relating to inland navigation. It was not a party measure, but was supported by the best men of both parties, and both parties were represented in the membership of the commis-

sion. The nine men chosen were among the most eminent in the State, and most of them were of especial fitness for the work before them. They were Gouverneur Morris, DeWitt Clinton, William North, Stephen Van Rensselaer, Simeon DeWitt, Thomas Eddy, Peter B. Porter, Robert R. Livingston, and Robert Fulton. Less than four years before Fulton, who had perfected his steamboat under the patronage of Livingston, sent his "Clermont" on her first trip from New York to Albany; a year later John Stevens had sent the "Phoenix" on the first steam voyage at sea, from New York to Philadelphia; and at this very time the steamer "Paragon" was being built at New York. Obviously a new era in navigation was dawning upon the world.

This commission was invested with great powers. It was authorized to enter into negotiations with the national government, or with the governments of other States, to secure their coöperation in the grandiose project of opening a navigable waterway from the Atlantic Ocean to the heart of the continent by means of connecting the Hudson River with the Great Lakes by canal. It was also empowered to accept subscriptions or other aid from individuals or corporations to the same end. Should these efforts prove insufficient in results, the commission was to ascertain on what terms it would be practicable to secure, on the credit of the State, a loan of capital for the execution of the gigantic work. It was apparent, and was consistently urged by Clinton, that the end desired could be attained only by means of a canal from the Hudson to Lake

Erie. Canals to Lake Champlain, to St. Lawrence, and to Lake Ontario would serve some useful purposes, but they would not give access to the great western lakes. The Niagara Falls were in the way of getting from Ontario to Erie and Huron and Michigan, and as yet nobody ventured to propose such a canal as the Welland.

Clinton was the most aggressive member of the commission, which indeed would not have been appointed but for his urgings. As soon as the appointment was made he and Morris went to Washington to solicit the aid of Congress. They did not venture to ask for an appropriation of money, either as a gift or a loan; but they did urge the granting of public lands in aid of the scheme. But their errand was in vain. It was not an opportune time, Congress thought, for such an enterprise. The embargo and other circumstances had depressed commerce and finance. The country was likely soon to be at war with Great Britain. And anyway the scheme was probably impracticable. Several New York Representatives in Congress were loud in their scorn of it and violent in their denunciation of its projector.

The result was that Congress rather curtly and most emphatically refused to have anything to do with the scheme, and Clinton and Morris returned to New York empty-handed. Clinton returned, moreover, to find himself made the target of such volleys of ridicule and abuse as few men have had to endure. Tammany Hall particularly raged against him and the canal. It declared that he knew the thing was impossible, and



was advocating it only for the sake of notoriety and political advantage. He had made the trip to Washington at public expense, it insisted, for political purposes. As for the "ditch from the Lakes to the Sea," it was as fantastically impossible as a ladder to the moon, and if any part of it was ever dug it would never serve any purpose other than that of a grave to bury its mad maker in! Thus for a time the canal project was necessarily held in abeyance, and seemed defeated.

There came up at the same time in an aggravated form a question which had already caused much scandal in the State, to-wit, that of the chartering of banks. We have already seen the circumstances in which the Manhattan Bank and the Merchants' Bank of New York City had come into existence, and the unspeakable corruption through which the State Bank was established. For several years the stench of this latter scandal was so great that nobody ventured to propose the chartering of another bank. But in 1812 such a proposal was made, in extraordinary form. With an inkling of what was coming, Governor Tompkins had devoted the greater part of his unprecedentedly long address to the Legislature to that subject. Referring to the fact that petitions were about to be presented for the chartering of new banks with aggregate capital of eighteen and a half millions of dollars, he suggested that enough banks had already been organized, and that such further increase of them might prove disastrous to the State. He dwelt upon the evils of financial speculation, and of the inflated expectations which promoters of banks too often

aroused; upon the bad influence of amassed and concentrated wealth; the increased facilities for counterfeiting; the abuse of credit; the evil of exempting so large an amount of property from taxation, and the danger of unfavorable reflection upon the integrity of public men.

Despite these arguments of the Governor, the bank schemes went forward. The Bank of the United States had failed to secure from Congress a renewal of its charter, and the result was that its stockholders had returned to them a large amount of uninvested capital. It was their purpose to reinvest this in another bank, in New York, which city was by this time clearly destined to be the financial metropolis of the United States. They therefore asked for a charter of an institution to be known as the Bank of America, with six million dollars capital; its name and the amount of its capital indicating its national scope. Their two chief agents in the promotion of the scheme were David Thomas and Solomon Southwick. Mr. Thomas was a veteran member of the Anti-Federalist or Democratic party, who had faithfully and efficiently served as member of Assembly, State Treasurer, and Representative in Congress. Mr. Southwick, as we have already seen, was the editor of the Democratic organ at Albany, a man of singular personal charm, and the devoted friend of DeWitt Clinton.

The Assembly on February 2, 1812, appointed William W. Gilbert, Johannes Bruyn, Henry Yates, and Francis A. Bloodgood members of the Council of Appointment—all supporters of DeWitt Clinton.

Three days later it elected David Thomas, the agent of the bank promoters, to be Treasurer of the State. Securing election by the Senate also, Mr. Thomas promptly entered upon that office, to the great advantage of the bank scheme. Then the demand for a charter for the Bank of America was made.

Seldom has a more unblushingly offensive proposal been made to a governing body. The State Bank had secured its charter by the bribery of individual members of the Legislature. This one sought to secure its charter by collective bribery of the State of New York. It purposed to devote to that end ten per cent. of its entire capital of six million dollars. If the State would give it a charter, it would give \$400,000 to the common school fund and \$100,000 to the literature fund; and it would pay \$100,000 more into the treasury of the State at the end of twenty years, if in that time no other bank had received a charter. In addition, the bank would loan a million dollars to the State for canals, and another million to the farmers of the State. This astounding scheme was commended to the public by an army of touts, and was pressed upon the Legislature by such an organized lobby as never had been seen before, and which has scarcely been surpassed since, even in the wildest heyday of the "Black Horse Cavalry."

Of course it was vigorously opposed. Governor Tompkins threw all his influence against it. Ambrose Spencer, though a strong Democrat and the brother-in-law of Clinton, was passionately outspoken against it, and became on that account Clinton's bitter personal

foe. John Tayler, who as a State Senator had, as we have hitherto seen, so powerfully contributed to the election of Tompkins as Governor, was also aggressive in his opposition to the bank. But both Spencer and Tayler were in a measure handicapped by the fact that the former was a large stockholder in the Manhattan Bank and the State Bank, and the latter was president of the State Bank; and they were therefore plausibly and perhaps truthfully charged with being moved by selfish purposes. Erastus Root, a new member of the State Senate, made some powerful speeches against the scheme, though he had formerly prostituted his splendid talents to the defense of similar iniquities.

Despite this opposition, however, the bill for chartering the bank was steadily advanced, and presently its enacting clause was passed in the Assembly by a vote of 52 to 46. Then, before the remaining clauses were taken up, explicit charges were made of attempted bribery. Casper M. Rouse, Senator from Chenango county, declared that David Thomas had offered him for his vote ten shares of bank stock, with a profit of a thousand dollars, and had asked him to close the bargain with Solomon Southwick. Alexander Sheldon, the Speaker of the Assembly, made a similar charge against Southwick. On the charges, Thomas and Southwick were both indicted, but the cases against them failed, partly because of lack of other testimony against them than that of their accusers, which of course they both denied, and partly because their accusers had subsequently to the date of the alleged attempts at bribery continued cordial relations with



them and had actually voted for Thomas for State Treasurer and for Southwick for Regent of the State University. Various other agents of the bank were also indicted for similar offenses, and some of them were convicted. One, formerly a clergyman, was sent to the penitentiary.

It may be recalled that when revelations of corruption were made in the case of the Merchants' Bank, the number of supporters of that enterprise was actually increased, as though bribery were a recommendation of it. It is a grim reflection upon the legislative ethics of that time that such was the case also with the Bank of America. After these accusations of bribery, the truth of which was widely believed, support for the bill increased, and the remaining clauses were passed by the Assembly by a vote of 58 to 39.

The bill then went to the Senate, where there was every prospect of its speedy passage. Erastus Root thundered against it, and those who looked to Clinton for guidance found him silent in circumstances which reversed the familiar rule and made silence denote dissent. Clinton was indeed at heart as much opposed to the bill, and to the chartering of any new bank, as was his brother-in-law, Ambrose Spencer; and for the same reason, namely, his personal interest in existing banks. He told Spencer frankly that such was the case, but added that he would not say so publicly and would not be drawn into the contest on either side. Thus it was because of Clinton's silence and not because of any advocacy of the bank, that Spencer quarreled with him.

The first trial of strength in the Senate was on a motion in committee of the whole to reject the bill. This motion was defeated, by a vote of 13 to 15. Besides, the chairman, E. P. Livingston, who had not voted, was known to be against the motion to reject and in favor of the bank. It was practically certain, therefore, that the bill chartering the bank would pass the Senate, as it had already passed the House.

Then the Governor intervened. On March 27, as already recorded, he prorogued the Legislature until May 21.

We have hitherto referred to the two motives which have been ascribed to Mr. Tompkins for that extraordinary action. That which was expressed in his message of prorogation was to secure time for reflection upon the bank controversy, and to investigate the scandalous charges of corruption which had been made. The other, unexpressed but widely attributed to him, probably with much truth, was a desire to interfere with DeWitt Clinton's campaign for the Presidency and to defeat him in that ambition. The latter was not a worthy motive, but it was successful. The former was worthy and commendable in a high degree, but it failed.

After referring to the large capital already invested in banking, and its adequacy to commercial purposes, and also to the prospect of a war with Great Britain, the Governor said:

"Can it be wise to increase our banking capital in an unprecedented manner, at a time when we have only a very limited and restricted commerce left? Can it

be prudent or safe at such a time to employ British capital and subject ourselves to its deleterious influence in thwarting the operations of our own government?"

But even these considerations became less important in view of others. He continued:

"It appears, by the journals of the Assembly, that attempts have been made to corrupt, by bribes, four members of that body, to vote for the passage of the bill to incorporate the aforesaid bank; and it also appears by the journals of the Senate that an improper attempt has been made to influence one of the Senators.

. . . Should its final passage now take place, before the persons implicated in holding out the above-mentioned inducements shall have been judicially tried, and without consulting the feelings and opinions of the community at large upon the subject, public sentiment will, I fear, however unjustly, attribute its passage, in some degree, to the influence of such inducements."

That was logical, honorable, manly, patriotic. But it was, unhappily, ineffective. The storm that rose against it was ferocious. Members of both houses raged against it, as though a *coup d'etat* had been attempted, and many of them before leaving Albany signed and published a formal protest against it. Of course Southwick's paper raged against it. Clinton remained silent, with the proverbial "mingled emotions." As a blow against the bank, he secretly rejoiced in it. As a deadly blow at his own Presidential schemes, he execrated it.

During the recess of the Legislature the April elections occurred, resulting in some Federalist gains but

leaving both houses under Democratic control. The elections gave little indication of popular feeling toward the bank, save that in Otsego county the Democratic county convention recommended to the district convention the nomination of E. H. Metcalf for State Senator, and the district convention rejected him for the sole reason that, while a most worthy and estimable man in all other respects, he had voted in the Assembly for the Bank bill.

During the recess, also, plans were formulated for defeating the Bank bill in the Council of Revision, which would have the power of vetoing it and over whose veto of it the Legislature might not be able to pass it. The Council consisted of seven members, including the Governor, and it was believed that four would approve and three would disapprove the bill. That would mean its approval. But if two more members could be added, both of whom were opposed to the bank, the bill might be killed. So a petition was presented to the Council of Appointment praying for the appointment of two additional Justices of the Supreme Court and for their "immediate appointment" in order that they might "arrest and prevent the passage of a bill before the Legislature entitled 'An Act to Incorporate the Bank of America.'" This petition was "not intended for general circulation, but was to be presented to influential Republicans (Democrats) only." Whether it was ever presented to the Council of Appointment is uncertain. Probably it was not. Certainly it was not acted upon by that body.





ROBERT FULTON

Robert Fulton, inventor; born in Little Britain, Pa., 1765; studied painting; made success as miniature painter in London; began experiments in mechanics and engineering; made experiments on the Seine with a boat for submarine navigation, 1796; made experiments with torpedoes in United States, 1806; launched first attempt at a steamboat, 1803; the Clermont, his steamboat, started on a trip on the Hudson August 11, 1807; Fulton died in New York City, February 24, 1815.



The Legislature reassembled on May 21, and the Senate immediately resumed consideration of the bank charter. Erastus Root was its chief opponent, and Morgan Lewis its principal advocate. At the end of a week it was passed by a vote of seventeen to thirteen. All the Federalists voted for it, as they had, with a single exception—that of Mr. Lorillard, of New York,—in the Assembly.

While these discreditable performances were going on, a work of the highest beneficence was also being promoted. On February 17, 1812, the Commission on Common Schools, which had been appointed in the preceding year, submitted a most interesting and valuable report, saying truly at its beginning: "Perhaps there never will be presented to the Legislature a subject of more importance than the establishment of common schools." After arguing the importance of popular education, the report recommended the establishment of common schools, under the direction and patronage of the State, in which should be taught reading, writing, arithmetic, and the principles of morality. The plan proposed that all towns be divided into school districts, with a school in each under the care of trustees elected by the people of the district; that the income from the State school fund be apportioned among the districts according to their school population; that each town raise by local taxation a sum equal to that apportioned to it by the State; that all such monies, State and local, be devoted to paying the salaries of teachers, the other expenses being otherwise provided for; and that the whole system be under the charge of a State

Superintendent. The report further gave much attention to ways and means of increasing the school fund, the qualification of teachers, and the courses of study.

As a consequence of this report the Legislature passed chapter 232 of the Laws of New York, which was enacted on June 19, 1812, and which, as stated in the preceding chapter, was the foundation of the present common school system of the State.

At the same session of the Legislature the Assembly committee to which had been referred the Governor's recommendation for an abatement of the provisions for corporeal and capital punishment, which he described as a "vestige of barbarism," made its report. It strongly opposed any such lessening of the severity of the laws, holding that "capital punishments are both expedient and necessary, and therefore justifiable," and that they were in this State attached to as few crimes as was consistent with individual security and public safety.



## CHAPTER XVI

### PARTISANSHIP IN WAR TIME

CICERO—or was it Caius Marius?—may have been right in declaring that “*Silent leges inter arma*”; but if he had been speaking in the day of which we are writing he must have added, “*Sed non factiones.*” Amid arms the laws may be silent; but at this time factions assuredly were not. It was the shame of America in its early years that political partisanship often dominated its diplomacy, and even intruded its pernicious influence into the conduct of war against a foreign foe. Such was the case in New York during our second war with Great Britain. That war was, indeed, in its inception largely an affair of party passion. When we recall the rabid utterances of Jefferson and Clay, the insane folly of which was soon to be disastrously demonstrated on fields of defeat and disgrace, we must agree with the mordant reproach of Randolph of Roanoke: “Agrarian cupidity, not maritime right, urges the war.” Thus begun, the war was conducted to the end amid conflicts of domestic faction at times approaching sedition and treason.

Nowhere, unless in some parts of New England, was the anti-war spirit stronger than in New York. Nowhere, not even in Virginia and Kentucky, was the war spirit stronger or more rampant. The Federalists were of course the anti-war party, and their attitude was far more logical, patriotic, and convincing than that

of the opponents of the war elsewhere. With impregnable truth and justice they charged responsibility for the circumstances which caused the war against the pacifist policy of Jefferson, and particularly against his unwillingness that the United States should have a navy. An efficient navy, rather than an embargo, was what had been needed. A score of "Old Ironsides" under captains like Hull and Perry would have ended impressment in short order and would have kept us out of war. Such was the contention of the New York Federalists, and in it they were everlastingly right; though of course even that fact was no justification of any acts or words calculated to embarrass or to handicap the national government when once it was, unfortunately, involved in that war.

The Democrats were, on the other hand, the war party, and for the time they were united in support of the government. The growing antagonism between Clinton and Tompkins was held in abeyance. So in a measure was the still stronger enmity between Clinton and President Madison. It was doubtless with reluctance that Clinton gave his support to the President. But even in his often blind and willful arrogance he realized that for the time he had no alternative. Opposition to the administration would have meant political suicide. For a strong racial influence had arisen. The suppression of the Irish Rebellion of 1798, followed by the Irish Union with Great Britain in 1800, had caused an important migration of Irishmen to America, the great majority of whom settled in New York. They were naturally intensely anti-British in sentiment, and

therefore enthusiastic supporters of the war. Clinton himself was of Irish ancestry, and had inherited a large measure of the hatred of England that had characterized his uncle George. Nothing was more logical, then, than that he should seek to become the leader of the steadily growing Irish element in New York politics.

The second meeting of the Thirty-sixth Legislature opened at Albany on January 12, 1813, and lasted until April 13, when it adjourned without day. The numerous communications from the Governor related chiefly to military matters. As the Federalists had a majority in the Assembly, they were able to elect a new Council of Appointment, consisting of Jonas Platt, Peter W. Radcliff, and John Stearns, Federalists, and James W. Wilkin, Democrat, the last named being chosen because there was no Federalist Senator from the Middle district. The relationship between Clinton and the Federalists made it certain, however, that none of his friends would be turned out of office by the Federalist Council.

That relationship was suspected, and indeed openly charged by Clinton's Democratic opponents, with playing a decisive part in the election of a United States Senator to succeed John Smith, whose term expired on March 4. As there was a Democratic majority on a joint ballot of the two houses, it was naturally expected that a Democrat would be chosen, and James W. Wilkin, State Senator from Orange county and the only Democratic member of the Council of Appointment, was regularly nominated as the candidate of that party. Rufus King was put forward by the Federalists.

On joint ballot King received 68 votes and Wilkin 61, and there were three blank ballots; and Mr. King was therefore elected. Even if the blank ballots had been cast for Mr. Wilkin, he would have failed to receive a majority. It was thus obvious that a number of Democrats had voted for the Federalist candidate, but just who they were was never disclosed.

The Tammany men of New York City, who were at this time almost solidly arrayed against Clinton, openly charged that he had directed his supporters in the Legislature to vote for King in fulfillment of a bargain which they said he had made with the Federalists in 1812, under which the Federalists voted for Clintonian Presidential Electors. The followers of Clinton vigorously denied this, and declared that the "selling out" of Mr. Wilkin was the result of a bargain made by Messrs. Thomas and Southwick in their campaign for the Bank of America, when they promised Democratic votes for a Federalist Senator in return for Federalist support for the bank scheme. Positive proof or disproof of either story was never adduced; but it was significant that Mr. Wilkin himself declared his utter disbelief in the former and his equally positive conviction of the truth of the latter version.

The 1812 Council of Appointment as its last act in January, 1813, appointed Gideon Hawley, a young lawyer of Albany, to be the first State Superintendent of Schools. His salary in that office was only three hundred dollars a year. But being a man of high ideals and devotion to the public service, he did his work as well as though his remuneration had been ten



times as great, and thus became the organizer of the common school system of the State, performing one of the finest pieces of constructive and administrative work for the public interest in New York's history.

The new Council of Appointment met for the first time on February 8, and at once vindicated the confidence which Clinton felt in its friendliness. Its first act was the reappointment of him as Mayor of New York. The motion for that act was made by Senator Platt, the same distinguished lawyer and Federalist leader who had been the Federalist candidate for Governor in 1807, and had then been defeated by DeWitt Clinton's candidate, Daniel D. Tompkins. At that time Platt and Clinton had been the strongest of political opponents. Yet in 1812 Platt used all his influence in behalf of Clinton for the Presidency, and in 1813 successfully moved for his reappointment to the highly lucrative and influential office of Mayor of New York. The only vote against this reappointment was that of Peter W. Radcliff, who was presumably actuated by personal motives in opposing Clinton. His brother, Jacob Radcliff, had been made Mayor in 1810 in place of Clinton, and a year later had been turned out of office to let Clinton in again. Because of his course in this and some other matters, Mr. Radcliff largely lost the confidence of his party associates and his influence as a party leader.

The next important contest in the Council was over the Attorney-Generalship. In August, 1812, the incumbent, M. B. Hildreth, had died, and Thomas Addis Emmet, the eminent Irish patriot, who had

come to America some years before, was appointed to the place. In February, 1813, Mr. Platt moved that he be not reappointed. This was a direct reversal of policy, since Mr. Emmet was one of Clinton's closest friends, whom the latter counted upon to hold the Irish voters of New York City solid in their support of him. Mr. Platt's action looked, therefore, much like a breaking of whatever understanding there had been between him and Clinton. Mr. Radcliff again opposed Mr. Platt's motion, though he would not vote upon it at all, thus reversing his own attitude, since he had refused to vote for Clinton but now refused to vote against Clinton's friend. Mr. Stearns voted with Mr. Platt, while the Governor and Mr. Wilkin voted against the motion. Apparently the vote was a tie, but it was held that the Governor's vote did not count since he was entitled to vote only in case of a tie of the Council, and in this case there was no tie, for two had voted Aye and only one Nay, the fourth member not voting. Mr. Emmet was therefore removed from office, and Abraham Van Vechten was elected in his place.

From this the Council, under the lead of Mr. Platt, went on to make another pretty clean sweep of offices, particularly of those which had good salaries attached to them, though it generally filled them with excellent men. Thus Pierre C. Van Wyck was removed from the Recordship of New York and J. Ogden Hoffman was appointed in his place. This was not, however, a blow to Clinton, since Mr. Hoffman, though a Federalist, had favored Clinton's reappointment as Mayor.

The Legislature, also, made a change in the only office at its disposal, that of State Treasurer, and although it had a Democratic majority on joint ballot it elected Charles Z. Platt, a Federalist, in place of David Thomas. There is no doubt that this was done because of Mr. Thomas's activity in the matter of the Bank of America and the charges of bribery that had been preferred against him.

The early part of this year witnessed the practical elimination of the Livingston family from leadership in New York politics, through the removal of its chief members. Robert R. Livingston died on January 28, after rendering services to steam navigation and to agriculture comparable in beneficence to those which he had performed in the exalted public offices that he had filled. Edward Livingston had removed to Louisiana, and Brockholst Livingston had gone upon the Supreme Court bench at Washington. The remaining members of the family, and members by marriages, were unable to maintain the authority that had formerly been exercised, and thus another long step was taken toward the freeing of the State from family or clan control.

The bank controversy of the preceding year was revived by the request of the Bank of America for a modification of the charter which it had obtained and for a very radical modification of the terms on which that charter was granted. It had asked to be authorized to have a capital of six millions. It now asked for a large reduction of that amount, which the Legislature granted. It also asked to be relieved from pay-

ing the \$600,000 bonus—or bribe, as many called it—which it had offered in consideration of the granting of the charter; its plea being that if it were bound to pay such a sum nobody would subscribe for its stock. This was a discreditable bit of what sportsmen call “welching,” and it was roundly denounced by all the opponents of the bank. Nevertheless the Legislature granted the request to the extent of releasing the bank from the obligation excepting to the extent of a hundred thousand dollars, which it was required to pay to the common school fund. It was freely charged that this action by the Legislature was secured by the bank through corrupt methods, but no indictments or prosecution of any kind ensued.

The paramount issue of the year in politics was, however, the succession to the Governorship. Mr. Tompkins's second term was drawing to a close, and it was no secret that he desired a third, to be a stepping-stone to the Presidency of the United States. There was in the Democratic party no serious thought of any other candidate. No doubt Clinton regarded with resentment the continued political prosperity of the man whom he looked upon as his own creation, and whom he doubtless regarded as an ingrate if not a traitor. But Tompkins's well deserved popularity was so great and so substantial that even in his utmost arrogance Clinton did not venture to oppose him. The usual caucus of the Democratic members of the Legislature was held, as a nominating convention, on February 4; but, as usual, only a small number attended. There were only forty-eight, nearly all from outside of New



York City. Presumably the reason for this abstention of members was, in great part, the hostility of Tammany Hall to that method of nomination. That organization had strongly committed itself to the practice which afterward prevailed, of calling a State convention specially constituted for the purpose of making nominations for State offices.

The caucus was harmonious and unanimous in renominating Tompkins for the Governorship. Over the Lieutenant-Governorship there was decided difference in opinion. Clinton was holding that office, and his friends urged that he should be renominated, as Tompkins had been. Against this Ambrose Spencer vigorously protested. Martin Van Buren, one of the most influential men in the caucus and the one chosen to draft the party platform, was looked to by Clinton to be his spokesman and champion. But that astute politician had a fine gift for anticipating "which way the cat would jump," and obviously realized that Clinton was doomed to rejection. He did not openly oppose him, as Spencer did, but he did not support him, and probably exerted some quiet and private influence against him. There is reason for suspecting that the Governor also, though of course not a member of the caucus, used some personal influence against Clinton. The outcome of the voting in the caucus was that John Tayler received thirty-two votes and was accordingly nominated, while Clinton received precisely half that number.

There was no ground for challenging the vote, and the elimination of Clinton from official life seemed to

be assured. But such a result was not to be acquiesced in meekly by that indomitable fighter and his devoted friends. He did not, it is true, openly bolt the party. That would have been fatal. But forty-one of his friends, led by Obadiah German and Philip Van Cortlandt, held a meeting and issued an address to the party and the voters of the State, which in style and spirit was so unmistakably like Clinton that it was a most reasonable assumption that he was himself the author of it. This remarkable document began with the Presidential campaign of the preceding year and reviewed it and the course of the national administration in a manner most unfavorable to Madison. It reviewed in like fashion the administration of Governor Tompkins. Finally, it protested against the election of the Democratic ticket, declaring that Tompkins and Tayler were both mere tools of the Federal administration at Washington; a charge which received color from the fact that in the platform upon which those gentlemen had been nominated Van Buren had made a most elaborate and impassioned defense and eulogy of Madison's administration.

This was a direct appeal to Democrats to bolt their party ticket and to vote for the Federalist candidates. The latter were not, however, well chosen. Stephen Van Rensselaer was the candidate for Governor, and George Huntington, of Oneida county, for Lieutenant-Governor. They had been nominated on February 11 at a convention consisting not only of the Federalist members of the Legislature but also of numerous other citizens, with Judge Egbert Benson as chairman and

Daniel Parrish as secretary—a combination of legislative caucus and popular convention. They were men of good character and ability. But Van Rensselaer had made an egregiously poor record in the war. He had been in command at Fort Niagara as a major-general of militia, and had there suffered a disastrous and indeed disgraceful defeat, which led James Monroe to declare him “weak and incompetent,” and Jefferson to say that he ought to be “broke for incapacity.” It was, of course, no uncommon thing for army officers, both militia and regular, to display incompetence and cowardice in that war. But such conduct did not commend a man to the voters of the State.

Still, the Federalists confidently expected success, and the Democrats were fearful of defeat. The schism of Clinton’s forty-one supporters was alarming. Against Van Rensselaer’s poor record at Fort Niagara a score of blunders by the administration at Washington could be named. Down to the very day of election the shrewdest political observers in both parties looked for the defeat of Tompkins, though it does not appear that the Governor himself feared it. He had confidence in himself, and his confidence was justified. New York City, Albany, Hudson, and other centers of population gave Federalist majorities. But the great rural vote of the State was true to the “farmer boy.” The result of the polling was 43,324 for Tompkins and 39,718 for Van Rensselaer. In the Legislature the result was mixed. The Democrats carried the Middle, Southern, and Western districts by substantial majorities, and the Federalists only the Eastern. But

in the Assembly the Federalists won, securing a majority of ten, because of the election of Federalist members by the votes of Clinton's friends in New York City.

In this campaign Solomon Southwick, with his Albany *Register*, had been not only outspoken but violent in opposition to Governor Tompkins and indeed to the Madison administration and to the Democratic party generally. This temporarily deprived the Democrats of a party organ at the State capital, and steps were taken to supply the want. A company was formed to establish a new paper in that city, to be known as the Albany *Argus*, and Jesse Buel, thitherto editor and publisher of the *Plebeian*, in Ulster county, became its editor. It quickly attained much influence, and had a notable record thereafter as an organ of New York Democracy.

As if to complete the discomfiture of Clinton, during the summer of 1813 several changes were made in important offices in New York City under the Federal government, including those of the United States Marshal and Surveyor of the Port, for no other reason than that the incumbents were friends of Clinton. The places were then filled with supporters of Tompkins. These changes were made at the urging of Ambrose Spencer, who constituted himself the leader of the anti-Clinton forces.

Governor Tompkins was thus supreme in the Democratic party in New York, and seemed fairly on the way to the Presidency of the United States, which was the goal he sought. Yet at this very time there seemed



to rise a serious obstacle in his path, in the person of a man whom he himself had put forward—as he himself had been put forward by DeWitt Clinton. This was John Armstrong, of whom people began to talk as likely to be the next President of the United States, a forecast which in the light of subsequent events now seems grotesque.

Armstrong was a pretentious weakling. He had been a protege and pupil of Horatio Gates in the Revolution, a circumstance in itself sufficient to damn him. It was he whom Gates sent post-haste after Benedict Arnold to try to call him back from winning the battle of Saratoga. Later he had written the wretched "Newburgh Letters."

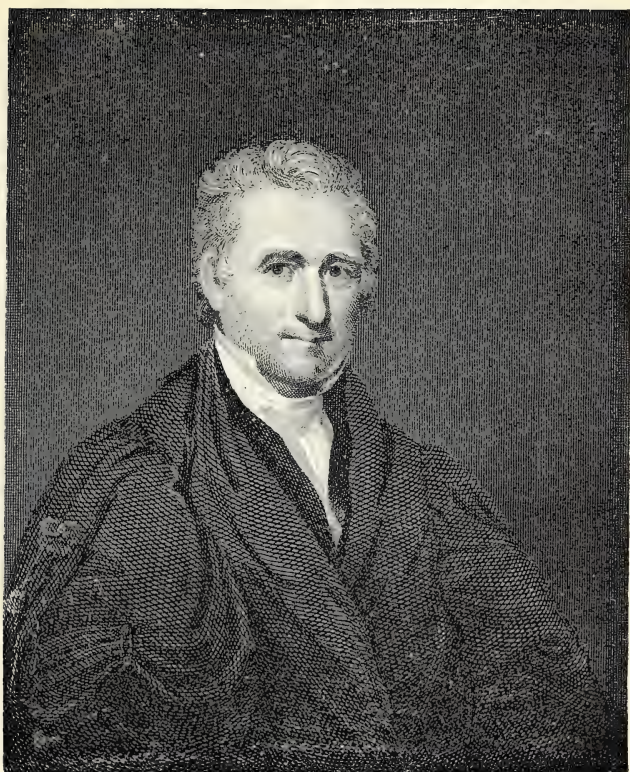
He wrote the "petition" against the Sedition laws which led to the prosecution of Jedediah Peck. He was elected to the United States Senate, hostile to Washington, and resigned. He was sent as Minister to France and Commissioner to Spain, and did not distinguish himself. Indeed, he was recalled from France at the request of the French government. Then he got himself commissioned a brigadier-general, and then, on almost the very day when Tompkins was renominated for Governor, Armstrong, largely through the favorable influence of Tompkins and Ambrose Spencer, was appointed Secretary of War. The Senate hesitated to confirm him because of its doubt of his fitness, but finally did so.

Tompkins, strangely enough, was fearful of Armstrong's rivalry. But long before the next Presidential campaign Armstrong was thoroughly elimi-

nated from the list of possibilities. It is true that he did some good work as Secretary of War. His general plan of campaign against Canada was not devoid of merit, though it was spoiled by Dearborn and Van Rensselaer. The best of all his services was his recognition of the ability of Jacob Brown and Winfield Scott and his promotion of them to places of usefulness. But on the other hand he persisted in sticking to, coddling, and promoting the unspeakable Wilkinson and assigned him to command in New York. Inevitably, the sequel was one of the most disastrous scandals in the whole war, which made the military campaign of 1813 the worst in the history of the United States army. The next year came the comparable disgrace of the abandonment of Washington to a handful of invaders, and that caused Armstrong's disappearance from public life.

That all through 1813 Tompkins should have been haunted with the fear that Armstrong would outstrip him in the Presidential race is a strange reflection upon his political sagacity and his judgment of men. Yet so strong was this fear that he actually became alienated from Ambrose Spencer because of the latter's intimacy with Armstrong, and thus lost the support of one of the most influential leaders of the State.

Meanwhile, DeWitt Clinton was engaged in a devious intrigue for the retention of the one office that was left to him, the Mayoralty of New York City. We have seen that while in April, 1813, the Democrats carried the State for Governor, the Federalists won the Assembly. That, under the practical alliance



ELIPHALET NOTT

Eliphalet Nott, educator; born in Ashford, Conn., June 25, 1773; clergyman; sent out from New London as missionary to Western New York; pastor and teacher at Cherry Valley; pastor of First Presbyterian church at Albany, 1798-1804; elected president of Union College, 1804; died at Schenectady, N. Y., January 29, 1866.





between him and the Federalists, should have assured the election of a Council of Appointment favorable to Clinton. But there were no Federalist Senators from the Middle and Western districts to appoint to the Council, and that body had, therefore, to stand two Federalists and two Democrats, with Governor Tompkins casting the deciding vote. The Federalists were Elbert H. Jones and Samuel Stewart, and the Democrats were Morgan Lewis and Henry A. Townsend. That, especially considering Lewis's enmity, seemed to mean disaster to Clinton. But Clinton was saved, at least from being turned out of the Mayoralty, by the support of Townsend, though in circumstances only a little less galling to him than loss of the Mayoralty would have been.

The preceding Council of Appointment had appointed James Kent, then Chief-Justice of the Supreme Court, to be Chancellor in place of Mr. Lansing, who had been retired for age, and it had promoted Smith Thompson from an Associate-Justiceship to be Chief-Justice in Kent's place. It appointed nobody, however, to succeed Thompson on the bench, and that vacancy was therefore to be filled by the new Council in 1814. It was the desire of the Federalists to appoint Jonas Platt, an eminently fitting choice, but of course there was little chance of their doing so unless through some bargain which would secure them the vote of Senator Townsend. This was effected through Clinton's desire to retain the Mayoralty of New York. It was made clear—indeed, it was already obvious—to him that Morgan Lewis would vote for his removal,

and that Lewis's vote added to the votes of the two Federalists would effect that end. Whether the suggestion came from Clinton or from the Federalists is not certain, though Clinton was generally regarded as the author of it; but it was to this effect, that the Federalists should vote with Townsend for the retention of Clinton in office, and that Townsend should vote with the Federalists for the appointment of Platt. This "deal" was quite practicable, since Townsend, although elected in 1810 as a Democrat and still nominally a member of that party, had stood with Clinton in the party fights, had voted for the Bank of America, and had openly quarreled with Governor Tompkins, Ambrose Spencer, and other party leaders.

The bargain was agreed upon and would have been carried through without any scandal or more than passing notice, had it not been for a counter-manœuvre by Clinton's implacable foe, Morgan Lewis. In some way he learned in advance of the bargain between Clinton and the Federalists, and reported it to Tompkins. It was recognized by them both that it would probably be impossible to prevent its consummation, but they agreed that it should be made as costly as possible to Clinton. Accordingly, when the Council met for the appointment of a Justice, Lewis promptly placed in nomination the name of Richard Riker. Now, Riker was Clinton's "own familiar friend." He had been his second in his duel with Swartwout. He had been the head of the committee which promoted Clinton's campaign for the Presidency. He had for years been Clinton's most loyal and most efficient lieutenant.

This, then, was the dilemma: If Townsend voted for Platt, Clinton would retain the Mayoralty, but Clinton's friend Riker would be defeated. If Townsend voted for Riker, Clinton's friend would win the Judgeship, but Clinton himself would lose the Mayoralty. And Townsend looked to Clinton for directions what to do. Clinton was thus compelled to choose between himself and his friend. To his credit—or perhaps to his discredit—he hesitated for some time. At last he decided, in favor of himself against his friend. He kept the Mayoralty, but he lost the most loyal friend he had in the world and gained another implacable enemy.

The only other appointment of consequence by this Council was that of Jacob R. Van Rensselaer to be Secretary of State, in place of Elisha Jenkins. Practically all of the other offices in the State were left undisturbed.

## CHAPTER XVII

### TOMPKINS'S THIRD TERM

**G**OVERNOR TOMPKINS entered upon his third term as a great national figure. His reëlection was regarded as a great triumph for a national administration which was sorely in need of all the aid it could get. Federalism, rejuvenated in opposition to the war, was rampant throughout the country. New England was wholly under its sway, in the extremest form; literally raging against the Washington government, and going so far as to talk of secession. New Jersey was strongly inclined in the same direction, but waited to see what New York would do. Had New York repudiated the administration, every State east of the Delaware River would have been arrayed against it and against the further prosecution of the war, and the price of retaining them in the Union might have been the complete discrediting of the administration and the summary ending of the war in a humiliating compromise.

But Tompkins won the New York election, and he was the staunch supporter of Madison's administration, not alone against the Federalists but equally against the anti-administration faction of the Democratic party. His reëlection was not only hailed with raptures of delight at Washington, but also it had a profound and decisive effect in other States. It caused New England to act with more moderation, and New Jersey



to withhold her adherence to extreme Federalism. Beyond doubt it saved the administration and the country from a serious political crisis.

The new Legislature, the Thirty-seventh, met at Albany on January 25, 1814, and the Federalists, having a majority of ten in the Assembly, elected James Emott, of Dutchess county, Speaker. The Governor's address was devoted chiefly to the war and to the direct tax which Congress had levied upon the States. One of the earliest acts of the Legislature was to pass, after an unseemly controversy, an appropriation measure for the relief of sufferers from the ravages of the war on the frontier. This was proposed by the Federalists in the Assembly, and was passed by a strict party vote, all Democrats voting against it. It is to be assumed that the Democrats voted against it for the reason that the Commissioners who were to administer the relief, and who were named in the bill, were all Federalists. The Senate, having a Democratic majority, passed the bill after amending it by substituting the names of Democrats as Commissioners. In this amendment the Assembly refused to concur, and for some time there was danger that the bill would fail altogether for that purely partisan reason. It was not until February 18 that it was finally enacted.

In other directions partisan and factional passions were manifested, sometimes to an indecorous degree. The Senate's reply to the Governor's address was written by Martin Van Buren, and exhibited all his adroitness of speech. It was of course entirely sympathetic with the Governor's view, and contained a deft

and subtle reproach upon all who ventured to oppose or to criticise the war. The reply of the Assembly was almost bitter in its hostility to the war and to the Governor. The Senate promptly passed a bill, in accordance with the Governor's recommendation, for the assumption by the State of its proportion of the direct tax levied by Congress, but the Assembly rejected it by a strict party vote—the Assembly committee which reported on it declaring that instead of wasting its resources by making further grants to the national government, the State should demand to be reimbursed for the expenses which it had already incurred on account of the war.

The Assembly adopted, on motion of a Federalist member, a set of resolutions expressing admiration of the achievement of Commodore Perry and his comrades in the battle of Lake Erie, but expressing disapproval of the "disastrous, destructive, and ruinous war," and insisting that our commercial rights should have been defended by a competent navy and not by an embargo. The Democrats strove in vain to secure the elimination of the hostile reflections upon the war and upon the policy of the national administration. Numerous other partisan controversies arose during the session, within each house and between the two houses, the chief Democratic protagonists in the Senate being Erastus Root and Martin Van Buren, the latter of whom swiftly rose to State leadership in the party, while the Federalists of the Assembly were represented by David B. Ogden, Samuel Jones, Jr., Charles Bing, and Jacob R. Van Rensselaer.

In other respects it was an active session. The Rev. Dr. Eliphalet Nott secured from the Legislature, for Union College, by virtue of some singularly adroit "log-rolling," a grant of \$200,000, to be raised by a lottery. Support for this extraordinary measure was secured by the expedient of coupling with it other but smaller grants to a number of institutions in various parts of the State—among them Columbia and Hamilton colleges, the Historical Society of New York, and the African church. The School law was radically revised according to a draft prepared by Mr. Hawley, the very competent Superintendent of Education. No fewer than sixteen applications for bank charters were received, chiefly, if not all, of the "wild cat" variety, and all were rejected. The Legislature adjourned without day on April 15.

In that month the annual election for a new Legislature was held, in circumstances of despondency for the Governor and his party. Despite the splendid achievements of Jacob Brown and Winfield Scott, the war had not been going well for the American arms, and there was a general feeling that the Federalists would win at the polls. But to the astonishment of both parties and to the delight of the Governor and of the administration at Washington, the Democrats swept the State. They elected every Senator save one, an overwhelming majority of the Assembly, and two-thirds of the Representatives in Congress. They would have elected all the Senators had not Solomon Southwick most injudiciously been put forward as one of their candidates in the Eastern district. That once phenomenally

popular and prosperous editor, printer, and politician, State Printer and agent for the Bank of America, had become practically bankrupt both pecuniarily and politically, and he was put forward by his friends in a vain hope of securing his rehabilitation. He was badly defeated by George Tibbits, a Federalist.

It seems not improbable that the victory in New York for the Democratic party and thus for the Madison administration was largely because of and not merely in spite of the reverses which the American arms had suffered in the war. For there soon followed what was in some respects the most humiliating reverse of all, namely, the disgraceful abandonment of Washington to a handful of British invaders, and in consequence a still further rallying of the people of New York to the support of the government. Even the most extreme Federalists, who a few months before had been adopting resolutions against the prosecution of the war, were now at least silent, while the masses of that party did not hesitate to join with Democrats in public meetings throughout the State, declaring that the government must be supported to the fullest possible extent, and that there must be no more partisan bickerings over the rights or wrongs of the war until foreign invaders were driven from the soil of the United States. At heart the Federalists were of course entirely militant for their country.

In New York City there was some fear that that place would suffer the fate of Washington, or at least that of Baltimore, and impromptu military organiza-



tions were formed, with daily drilling, in preparation to repel an attack. DeWitt Clinton, as Mayor, took the lead in these operations, and thus regained much of the popularity and prestige which he had lost, though of course that was not his purpose in his patriotic endeavors.

But the supreme leader in patriotic devotion was Governor Tompkins, and at this crisis he rose magnificently to the needs of the occasion. There was pressing need for money, to the amount of at least half a million dollars, for the fortification and defense of New York and other equally urgent purposes. The banks were asked to loan it, on the security of the treasury notes of the United States government; but they refused. That was not so much a reflection upon the patriotism of the banks as upon the solvency of the national government. The banks could not properly risk the money which they held in trust for their depositors on a security which they deemed inadequate, and thus they regarded, at that unhappy time, the notes of the United States treasury!

They would, however, advance the money upon the security of such notes, if Governor Tompkins would endorse the notes! Now, Tompkins was not a rich man, and would not be able to make good out of his own means any such sum as half a million dollars. Moreover, he had no authority to endorse the notes in the name of the State, but would do so entirely on his own personal responsibility. It was not his fortune, it was not his official position, for which the banks had

regard, but simply for his personal character. It would have been impossible to pay him a higher tribute than that which was thus implied.

It is interesting to recall that this proposition was made to the Governor by Rufus King, the leader of the Federalists and the implacable opponent of the Madison administration. But King placed patriotism above party or personality. He went straight to the Governor and told him what the banks wanted; adding that it was a time when it was every man's duty to place himself and all that he had at the service of the government, which he was willing to do.

"If I do this," observed Tompkins, "it will be on my own responsibility, and if the government defaulted or the State did not back me up, I should be ruined."

"Quite true," replied King, "and it is better for a man to be ruined than for the country to be lost. But I pledge you my honor that if you will do this thing I will support you to the full extent of my resources."

Without hesitation Tompkins endorsed the notes, and the money was provided by the banks. It should be added that at various other times during the war Governor Tompkins borrowed money for the government without authority and on his personal credit, and on some occasions failed to secure proper vouchers. The result was that the military accounts of the State became badly mixed, and the Comptroller reported that there was a deficit of \$120,000 to be charged against the Governor. Tompkins replied that on the contrary the State was owing him a large sum. An official

investigation was ordered, and it was found that the State was indeed indebted to him in the sum of \$90,000.

The British capture of Washington had the effect of finally eliminating John Armstrong from public life. Immediately upon that disaster he resigned his place as Secretary of War, and retired to his home at Red Hook, to spend the remainder of his life as a recluse. Dr. Hammond in his *History of New York* strongly intimates that Armstrong was unjustly sacrificed, first by President Madison, who wanted to make him the scapegoat of the administration, and second and third by Monroe, who was Secretary of State, and by Governor Tompkins, both of whom had Presidential aspirations and regarded Armstrong as a formidable rival whom they wished to get rid of. It scarcely seems credible that this was true, at least so far as Madison and Tompkins were concerned; nor has maturer judgment confirmed Dr. Hammond's high estimate of Armstrong's "mighty intellect."

Governor Tompkins very judiciously called the Thirty-eighth Legislature together in special session on September 26, 1814, when Samuel Young was chosen Speaker of the Assembly. The Governor in his address dwelt chiefly upon the war and its exigencies, and the special perils and duties of New York. He urged the desirability of relieving the poorer classes of the population from bearing the unreasonable proportion of the burden of militia duty to which they were subjected by the existing laws, and the necessity of making property the criterion of contribution to the

public defense. Upon this recommendation the Legislature acted favorably and promptly, with a law authorizing the raising of troops for the defense of the State on a classified system. Twelve thousand men were to be enlisted, practically by conscription. Nominally they were to be volunteers; but if each class did not provide its quota of men, assessments were to be made upon all the members of the defaulting class in proportion to their property holdings. It was a drastic measure, but it was approved by public sentiment. Another law provided for the enlistment of two thousand negro slaves for three years. Such enlistments were to be with the consent of the masters of the slaves, and the negroes were to be emancipated from slavery on being honorably discharged at the end of their term of service.

Another law increased the pay of the militia, while in the national service, above the compensation granted by the national government, and another provided for the enlistment of a corps of "sea fencibles," consisting of twenty companies, for the special defense of the port of New York. These "sea fencibles" were to be enlisted for three years, and were to be constantly ready at instant call for service. It was intended that they should take the place of the militia for port defense, leaving the latter free for inland service. Governor Tompkins was reimbursed for personal expenditures which he had made in emergencies without authorization; provision was made for fuller fortification of Staten Island; men actually engaged in the



public military service were exempted from arrest on civil process; and traffic and intercourse with the enemy were prohibited.

Still another law was enacted, of dubious virtue even at that time. It was intended to promote privateering against the enemy's commerce, by authorizing the organization of associations for that purpose. This alone of all these war measures met with serious opposition in the Legislature, the Federalist members voting solidly against it. More significant still, the Federalist members of the Council of Revision, under the lead of Chancellor Kent, opposed it and sought to veto it. The Chancellor argued against it with impressive force, as a measure contrary to the genius of the American Constitution and repugnant to the civilized and enlightened spirit of the age. Reply was made to the Chancellor in the public press by Martin Van Buren, who had become the chief spokesman of the national administration in New York and therefore the champion of all State measures intended for its aid and comfort, and the law was approved by the Democratic majority of the Council of Revision, though the moral honors of the discussion undoubtedly rested with Kent.

During this session of the New York Legislature the scheme of the famous Hartford Convention was broached by Harrison Gray Otis and other Massachusetts Federalists, and was of course brought to the attention of the leaders of that party in New York. It was variously regarded by them. Some of the foremost, such as Daniel Cady and Abraham Van Vechten,

would have nothing to do with it, but opposed it in the strongest manner as unpatriotic if not actually treasonable; and their influence was so commanding that the party as a whole never committed itself to the scheme or gave it any encouragement. On the other hand, there were some who did favor it, and a considerable number were inclined to give it serious consideration. Among these were many of the Federalist members of the Legislature, a dozen of whom went so far as to issue a call for a New York State convention, the purpose of which was ostensibly to consider the course which should be pursued in matters of State legislation, but which must almost certainly have had in contemplation coöperation with the extremists of New England. Abraham Van Vechten was, strangely enough, among those who issued the call. His motive was, however, to assure himself a place in the Convention if it should be held, in which he could oppose, with all his unsurpassed dialectic skill, any extreme action.

The call for this Convention was published in the New York *Evening Post*, one of the foremost Federalist papers, at the end of September, 1814, and on October 5 the Convention was held. It was not a public gathering, however, and reports of its proceedings were not printed. Happily, it was attended by Abraham Van Vechten, Daniel Cady, Gouverneur Morris, and other men of influence and ability who, whatever their political sentiments, were not disposed to play at sedition. They served as a most effective check upon the more radical spirits, to so good effect that no action

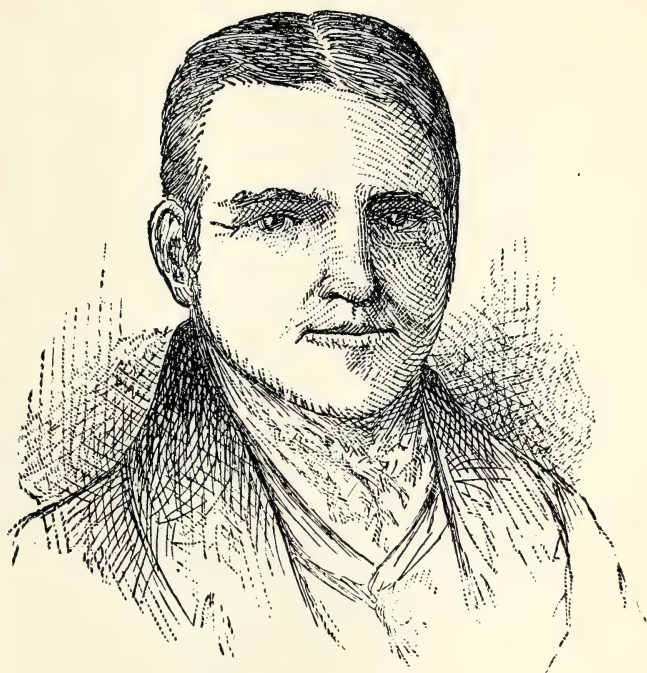
concerning the Hartford Convention was taken, and indeed no mention of that ill-starred body was made. Instead, the New York gathering contented itself with discussing the attitude which ought to be assumed toward the proposed Conscription act, already mentioned, which Van Buren had caused to be prepared at Albany for adoption by the Legislature, and which was then pending. The volunteer system in the army had proved a disgraceful failure, and in sheer desperation the State and Federal governments looked to a draft as necessary to save the country from British conquest. The New York State act was passed, and there is little doubt that still more drastic conscription would have been resorted to by the Federal government itself had not the news of the peace-making at Ghent come with unexpected suddenness. But in October there was no expectation of peace, and there was expectation of a draft, and to that subject the New York Convention addressed itself.

That Governor Tompkins intervened in or attempted in any way to influence this Federalist gathering is not to be supposed. Yet there is no doubt that his presence in the State and his general influence in behalf of the national administration were of immense service at this critical time. In fact, it may be doubted if any other one man in the nation was so great a power for good. Upon the retirement of Armstrong from the War office the duties of that department were temporarily assumed by James Monroe, the Secretary of State. President Madison thereupon invited and even urged Tompkins to enter his cabinet as Secretary of

State, the plan being for Monroe to resign that office in favor of that of Secretary of War. Madison earnestly desired this, and Monroe was understood to be quite willing. At this time, too, the State department was regarded as the pretty sure stepping-stone to the Presidency, and it was intimated to Tompkins that he could count upon the influence of the administration to make him Madison's successor in the White House. The temptation was strong, and it was directly in line with Tompkins's own ambition. But patriotism was superior to personal preferment, and the Governor's vision was keener and his judgment was sounder than the President's. Tompkins declined the flattering invitation, on the ground that he could serve the nation and incidentally the administration more efficiently as Governor of New York than as Secretary of State. In that he was quite right. The crisis of the war was at hand, and New York held the key to the national position. If it stood firm in support of the government, New England disaffection would be restrained by an impassable barrier. If New York joined the Hartford extremists against prosecution of the war, chaos yawned in the foreground of the scene. So Tompkins remained at Albany, and New York remained true to the Union; and a little later came news of the treaty of Ghent.

There were in our second war with Great Britain many heroes in the American navy. There were a few heroes in the American army. The one resplendent hero of our civil life was the Governor of New York, Daniel D. Tompkins.





AMBROSE SPENCER

Ambrose Spencer, jurist; born in Salisbury, Conn., December 13, 1765; city clerk of Hudson, N. Y., 1786-93; member of assembly, 1794; state senate, 1796-1802; assistant state attorney general, 1796; attorney general, 1802-4; justice supreme court, 1804-19; regent, 1805; chief justice, 1819-23; member of congress, 1829-31; mayor of Albany, 1824-26; died in Lyons, N. Y., March 13, 1848.



The special session of the Thirty-eighth Legislature adjourned on October 24, 1814, and the regular session began on January 31, 1815. The Assembly being strongly Democratic, a new Council of Appointment was promptly elected, of that political faith, its members being Jonathan Dayton of the Southern, Lucas Elmendorff of the Middle, Ruggles Hubbard of the Eastern, and Farrand Stranahan of the Western district. They were all Democrats, and the party behind them was, as was years afterward remarked of another organization, "very hungry and very thirsty," since for three years appointments had been chiefly under Federalist control. A "clean sweep" of the offices was expected and was intended. Indeed, it was effected, but not with the expedition which was anticipated.

For there at once arose sharp rivalries within the party, with Martin Van Buren, Ambrose Spencer, and DeWitt Clinton as the storm-centers. Van Buren was a State Senator and the acknowledged leader of the party in the Legislature, and he wanted to be Attorney-General. But in this ambition he was opposed by Spencer, who was jealous of the younger man's rapidly increasing popularity and influence, which were surpassing his own, and who accordingly put forward John Woodworth as a candidate for the place. It will be remembered that Woodworth had formerly been Attorney-General, and had been displaced by the Federalists in favor of Van Vechten, and that fact was of course a strong argument for his reappointment. Between the two the Council of Appointment was evenly divided. Ruggles supported Woodworth

because he was his neighbor and friend, and Stranahan did so because he was entirely subject to Spencer's influence. Dayton and Elmendorff were subject to the will of the party "machine," and accordingly voted for Van Buren. That compelled the Governor to cast the deciding vote. He was reluctant to do it, yet he did not hesitate to vote for Van Buren. His reasons for the choice were doubtless several in number. In point of legal ability and fitness for the place, Van Buren was certainly the peer if not the superior of Woodworth. But apart from that, it was no secret that Governor Tompkins strongly disapproved of Spencer's activities, rightly holding that a Judge should keep aloof from partisanship. Being a candidate for the Presidency, moreover, it was only human nature that Tompkins should incline—other things being equal—to that side which promised him the greatest political advantage, and there was no doubt that that was Van Buren's side.

This was the beginning of a complete rupture between Tompkins and Judge Spencer. When the office of Secretary of State was to be filled there was a similar division in the Council. Spencer asked for the appointment of his friend Elisha Jenkins, who had formerly filled the place. Another candidate for it was Samuel Young, the Speaker of the Assembly. But the Governor, having the deciding vote, refused to accept either, and practically compelled the Council to elect Peter B. Porter. The latter had been a prominent Representative in Congress and as such had drafted and reported the resolutions calling for the War of



1812; he had declined appointment as commanding general of the army; but he had brilliantly distinguished himself at Chippewa and at Lundy's Lane, receiving therefor a gold medal from Congress; and he was afterward Secretary of War in John Quincy Adams's cabinet. One of the most universally respected men in America, his appointment as Secretary of State of New York was an honor and an adornment to that commonwealth. But it offended Spencer. Incidentally, no doubt, it greatly strengthened Tompkins's political position, though it would be ungracious to suggest that that was the reason for the Governor's insistence upon it.

A third blow to Spencer was given in the election of a United States Senator to succeed Mr. German. Long in advance of the actual election Judge Spencer proposed John Armstrong as a candidate, partly on the same ground as that of Woodworth and Jenkins, that he had formerly filled the office; but also, no doubt, to provide a place for him and to "vindicate" him after his retirement in disgrace from the Secretaryship of War. Against this Governor Tompkins openly protested, and in his opposition to Armstrong he was strongly seconded by Van Buren. Finding that Armstrong's election was impossible, Judge Spencer had himself proposed as a candidate, by some of his friends, while the Governor and Van Buren advocated the election of Nathan Sanford. When the legislative caucus assembled to choose the party candidate an informal canvass showed that a majority favored Sanford. At that Van Buren, seeking party harmony and wishing

to give an opportunity for Spencer's graceful withdrawal, declared that he had reason to believe that Judge Spencer did not wish to be considered a candidate, and indeed would not accept election. Thereupon a committee was appointed, at the demand of Spencer's friends, to wait upon him and ascertain his wishes in the matter. The committee confidentially told Spencer that the majority of the caucus was against him; and in consequence it brought back from him the reply that the Judge was unwilling to be regarded as a candidate because he "would not put himself in competition with so young a man as Mr. Sanford"! In fact, Sanford was fourteen years the younger, being thirty-six while Spencer was fifty. Sanford was of course elected.

These operations naturally cemented a close political friendship between Governor Tompkins and Mr. Van Buren. They also inclined Judge Spencer to ally himself with anyone who was opposed to or was opposed by those gentlemen; and thus he was led to span a breach of years and to renew his old-time friendship with DeWitt Clinton. At first, it is true, the antagonism between Spencer and Clinton was intensified, the former urging that the Council of Appointment should remove Clinton from the Mayoralty of New York which he still held and which was the most lucrative and almost the most powerful office in the State. Tammany Hall was insistent upon Clinton's deposition and instructed Dayton, a Tammany man, to vote for it, and Spencer directed Stranahan to do the same But Hub-

bard and Elmendorff refused, making a deadlock in the Council, which the Governor hesitated to break with his vote.

This hesitancy may have arisen in part from political considerations. Had he voted one way, the Governor would have incurred the hostility of the Clintonians, who were a powerful faction. Had he voted the other way, he would have incurred the enmity of Tammany Hall, or Martling's Men, as that organization was still often called. In either case his campaign for the Presidency might have been unfavorably affected. There is, however, no doubt that he was reluctant on the merits of the case to see Clinton removed. That formidable man, having passed through the *furor politicus* of his earlier years, had ripened into scholarship and statesmanship comparable with the best in America. He had been efficiently loyal in the war, and heroic in the yellow fever epidemic which had scourged the city, and there was no serious fault of any kind to be alleged against his administration, which had lasted longer than that of any other Mayor of that city since Peter Stuyvesant, with the sole exception of Richard Varick.

He was, however, marked for slaughter. Tammany Hall insisted upon it, and Tammany was then the dominant and representative faction of the party in New York City. The deed was finally effected through one of the strangest political combinations in the history of the State. Gulian C. Verplanck, who afterward was for many years one of the foremost jurists, theologians, scholars, and men of letters in New York,

was at this time actively interested in politics as the leader of a small but highly intellectual faction of independents such as three-quarters of a century later would have been known as mugwumps. Conceiving an antagonism toward Clinton, presumably because the latter was a "practical" politician, Mr. Verplanck employed his brilliant literary talents in writing for the press a series of political papers attacking him with great severity. They were not all, it is true, directed against Clinton. Some, written from the Federalist point of view, were addressed to the Federalists, of whom indeed Mr. Verplanck was one, dissuading them from the Hartford Convention folly and urging them loyally to support the government. But those attacking Clinton attracted most attention and had most effect. The articles were signed "Abimelech Coody," and purported to be written by a mechanic of that name.

These articles did not pass without reply from Clinton himself, who wrote over the signature of "Traveler." He attributed Verplanck's enmity to the fact that while Clinton was Mayor and Verplanck was a student in Columbia College, the latter was indicted for leadership in a students' riot. "He has become," continued Clinton, "the head of a political sect called the 'Coodies,' of hybrid nature, composed of the combined spawn of Federalism and Jacobinism, and generated in the venomous passions of disappointment and revenge, without any definite character; neither fish nor flesh, nor bird nor beast, but a nondescript made up of 'all



monstrous, all prodigious things.'” The name of “Coodies,” thus given, stuck to Verplanck and his associates for many years. ,

Now there was by nature nothing in common between Verplanck and his chosen few on the one hand and the “machine politicians” of Martling’s Long Room on the other. Yet in their common hostility to DeWitt Clinton a common ground of close alliance was found between the “Coodies” and Tammany Hall. This alliance was confirmed when Tammany agreed to support Judge Radcliff, who was one of the “Coodies,” for the Mayoralty in place of Clinton. Judge Spencer also joined the combination, making the alliance tripartite. Pressure was first brought to bear upon Lucas Elmendorff, who as a college man of intellectual proclivities was receptive to the approaches of the “Coodies,” and who finally agreed to vote for displacing Clinton with Radcliff provided the remaining member of the Council, Hubbard, would do the same and thus make the vote unanimous.

Now, Ruggles Hubbard had been elected to the Senate as a Clintonian. But he was a man of loose morals, spendthrift habits, and weak will, habitually embarrassed with debts. When, therefore, emissaries from Martling’s Long Room promised him the office of Sheriff of New York, worth ten thousand dollars a year, if he would vote against Clinton, he quickly yielded to the bribe. So the detestable “deal” was carried through. Tammany insisted, however, upon first making the grand sachem of that order, John Ferguson, Mayor, until he could be appointed Sur-

veyor of the Port, after which Judge Radcliff was made Mayor. Hubbard was made Sheriff, and if he did not pay all his debts he was at least free from annoyance by his creditors.

With these transactions DeWitt Clinton disappeared for a time—his foes fondly hoped it would prove to be forever—from public life. He even withdrew from his home in New York and went into retirement in the remote rural village of Newtown, Long Island, abjured politics, and devoted his attention to literary and scholarly pursuits. His removal from New York was probably a matter of pecuniary necessity. He had lost most of his fortune, and he had followed no business nor profession in which he could amass a competence, but had depended for support chiefly upon his official salary. His own family was large, and he sought to give its members the best obtainable education, and there were other relatives and friends hanging upon him. While not recklessly extravagant, he had been compelled by his official and social position to spend his income freely, and his lack of businesslike system in domestic economy made his disbursements larger than they should have been. The result was that when he was turned out of the Mayoralty he was heavily in debt and almost as insolvent as the wretched Hubbard who had betrayed him. Naturally, therefore, he sought the seclusion and the economies of Newtown as a matter of necessity. But, as was said half a century later of a far greater man, "he knew to bide his time."

Meantime Governor Tompkins was in the enjoyment of great and well-deserved political prosperity. He

was free from the blame of Clinton's apparent ruin, and had shrewdly avoided incurring embarrassments in other directions. His popularity in New York was very great, and it was by no means inconsiderable in all the States of the Union. He had the favor of President Madison who, although disappointed in his declination of the invitation to enter the cabinet, still wished the Presidential succession to pass to him rather than to Monroe. There was, save for a single circumstance, every prospect that it would pass to him. But that one exception, though for the time overlooked by him, was formidable and eventually proved fatal to him. That was the opposition of Ambrose Spencer. Though wearing the ermine of the highest judicial bench, he remained one of the most active, most ambitious, and most influential politicians in the State, versed in every trick of the politician's art, and with an unfailing readiness to be the friend or the foe of any man for the furtherance of his own ends. Rightly or wrongly, he charged Tompkins with prime responsibility for the defeat of his proteges, Woodworth and Jenkins, and above all his own defeat for the United States Senatorship. Thereafter he bent all the power and resources of his great intellectual ability to the compassing of Tompkins's discomfiture, with such results as we shall presently see.

Meantime the Thirty-eighth Legislature pursued an interesting course. The Governor on February 23 reported, in a special message, the treaty of Ghent, and, on the recommendation of the Assembly, he appointed a day of public thanksgiving, coinciding with

that designated by President Madison. He also at the same time reported that the Federal government had contracted for the purchase of a farm near Plattsburgh, on Lake Champlain, for army camp purposes, and solicited the assent of the Legislature—an incident which may be regarded as the remote foreshadowing of the invaluable enterprise at the same place which was organized by General Leonard Wood in the days of the Great War. An act was passed providing for the cession of land to the government for military purposes. The Legislature disapproved a number of amendments of the Constitution of the United States which had been proposed by the Legislatures of Massachusetts, Connecticut, and Georgia. These would have required a two-thirds vote of Congress for the admission of a new State, for the imposing of an embargo, or for a declaring of war; would have excluded naturalized citizens from all civil offices, would have restricted the President to a single term, and would have forbidden the election of a President from the same State twice in succession. The session adjourned without day on April 18, 1815.

The legislative elections of the spring of 1815 showed the effects of the intestine feuds of the Democratic party, and particularly of the scandalous performances in New York City, where Clinton had been removed from the Mayoralty which he had filled more efficiently and acceptably than any other incumbent of the office down to that time, and the unspeakable Hubbard had been pitchforked into the Sheriff's office. The city sent a solid Federalist delegation to the



Assembly, and this, with some Federalist gains elsewhere in the State, was sufficient to divide the new house evenly between the parties, each securing sixty-three members. The Democrats retained control of the Senate.

In consequence of this result at the polls, the organization of the Thirty-ninth Legislature was marked with such confusion and intrigue as had never before been known in the State. The session was, by law, to begin on January 30, 1816. But not all the members were present on that day, and as there were more Democrats present than Federalists, if a meeting had been held the former would have elected one of their number Speaker and would have organized the Assembly as they pleased. All the Federalists accordingly absented themselves from the chamber, thus preventing the counting of a quorum. The next day all members were present save three, who were away by illness, and a meeting was held at which the Democrats elected Daniel Cruger to the Speakership by a majority of one vote, 62 to 61—Mr. Cruger voting for himself. Aaron Clark, Democrat, was elected Clerk.

There immediately thereafter arose a contest for a seat as a member from Ontario county. Peter Allen, Democrat, had received a certificate of election from the County Clerk, but his right to it was contested by Henry Fellows, a Federalist. It appeared that Fellows had actually received a majority of thirty votes. But in one town, where he received forty-nine votes, the Town Clerk wrote his name in the certificate in full, "Henry Fellows," while the inspectors in the duplicate

return abbreviated it to "Hen. Fellows." Although there was of course not the slightest doubt that both forms of the name referred to the same man, the County Clerk rejected the forty-nine votes altogether, and issued the certificate to Allen, who was thus made to have nineteen majority. As the Assembly was already evenly divided between the parties, it was obvious that upon the decision of this contest depended the political control of that body. William A. Duer, an eminent Federalist from Dutchess county, presented the petition of Mr. Fellows and asked for its immediate consideration, but by a party vote the reading of it was postponed until the next day, the Speaker ruling, despite protests, that Allen had a right to vote upon that question.

A truce was then made for three days, when the strife was renewed over a Democratic motion to proceed at once to the election of a Council of Appointment. A Federalist motion was made to postpone such election until after the contest over the Ontario seat was decided. This latter motion the Speaker ruled out of order. Then another Federalist motion was made postponing the election for three days and ordering that meanwhile the seat contest be taken up for decision. The Speaker permitted this to be put, but insisted upon the right of Peter Allen to vote upon it. A motion was then made that Mr. Allen be excluded from voting on a question in which he was himself interested. This the Speaker ruled out of order, and upon an appeal being taken insisted upon Mr. Allen's being permitted to vote. In such circumstances the

vote was 61 against the Speaker's ruling and 61 (including Allen's) for sustaining it. The Speaker thereupon gave the deciding vote in favor of himself, and declared his ruling sustained. Several other divisions were had, in all of which Allen was permitted to vote on questions directly concerning himself.

In such fashion the Assembly finally proceeded to the election of a Council of Appointment, and Darius Crosby, William Ross, Parley Keyes, and Archibald S. Clark, all Democrats, were elected—at least two of them owing their election to the vote of Peter Allen. Then, the purpose of keeping Allen in his seat having been achieved, the committee on elections immediately reported, unanimously, that Allen was not entitled to his seat and that Mr. Fellows should be seated in his place, and that report was adopted by the Assembly by a vote of 115 ayes to only a single nay—which, strange to say, was not that of Allen himself! Since that day there have been many contested seats, and some of the contests have been unjustly decided; but never in the history of New York, if of any State, has there been a more flagrant, brazen, and cynical perversion of right and justice than in that case. The Council of Appointment which was thus fraudulently elected had little to do, as practically all the offices were already filled by Democrats. The only important change was caused by the resignation of the office of Secretary of State by General Porter, and the appointment of Robert Tillotson, an excellent man and a son of the former Secretary of State, Dr. Tillotson, to fill it.

The address of the Governor at this session of the Legislature was largely devoted to topics suggested by the war. In addition to these he recommended prosecution of the Erie and Champlain canal schemes, and the Legislature presently adopted an act for further surveys and for soliciting Federal aid. He also recommended encouragement of manufacturers, and the Legislature passed an act continuing the statute for the chartering of corporations. The Legislature adopted resolutions heartily commending the heroic conduct of Captain Samuel Chester Reid for his defense of the little privateer "General Armstrong" at Fayal, when it was attacked in neutral waters by an overwhelming British force; and the Governor transmitted them to Captain Reid with a glowing letter of eulogy from his own pen. The Legislature adjourned without day on April 17, 1816.



## CHAPTER XVIII

### TOMPKINS AND THE PRESIDENCY

THE year 1816 was big with politics, in New York and in the nation. It was the duodecennial year, in which both a President of the United States and a Governor of New York were to be chosen; and for both offices Daniel D. Tompkins was a candidate. As early as February 14 a caucus of the Democratic members of the Legislature, under the leadership of Martin Van Buren, unanimously instructed the New York Representatives in Congress to vote for him in the Congressional caucus for the Presidency; though, as we shall see, the same foxy leader afterward prevented them from doing so. A week later the Albany caucus unanimously renominated Tompkins for the Governorship, for his fourth term, and also Mr. Tayler for the Lieutenant-Governorship. Tompkins probably had little or no desire to be reëlected Governor, because if elected President he would have to resign that office. But he felt that it was necessary for him to make the run in order to prevent the Federalists from carrying the State. We have seen that in the elections of 1815 the Federalists made great gains. They were in fact so great as to encourage them to hope for a complete victory in 1816.

It had been the purpose of the Federalists to nominate William P. Van Ness for the Governorship. But this plan was abandoned as soon as the Democrats,

through the illegal vote of Peter Allen, secured continued control of the Council of Appointment; because if Van Ness resigned his place on the bench, the Council would fill it with a Democrat. So Rufus King, then a United States Senator, was nominated. His distinguished abilities, high character, and immense prestige made him the most formidable candidate that could be put into the field, and the ticket was further strengthened by the naming of George Tibbits, of Troy, for Lieutenant-Governor. So strong was this ticket felt to be that there was little hope of any Democrat winning against it save Tompkins himself. Accordingly he accepted the renomination and made the race. The result demonstrated the wisdom of his course. The Federalists waged an aggressive campaign, keeping the Democrats everywhere continually on the defensive, and it was confessedly nothing but Tompkins's personal popularity and charm that saved the day for him. The result of the polling was 45,412 for Tompkins, and 38,647 for King. Against any other Democrat in the State, King would have had an easy victory.

That reëlection marked the zenith of Tompkins's career. His administration was in its ninth year and was about to be prolonged to its twelfth. It had been singularly free from scandals of any kind, and had been marked with some of the finest patriotic devotion in our country's history. Every favorable anticipation of the Governor had been abundantly fulfilled. Political opponents as well as followers acclaimed his purity of life, his courage of action, his unselfishness in patriotism, and his elevation of statesmanship. Of all the



WILLIAM JAY

William Jay, jurist; born New York City, June 16, 1789; graduate from Yale, 1808; studied law; appointed by Governor Clinton first judge of Westchester county, 1820; elected and held office until superceded by Governor Bouck at the instance of the pro-slavery element in 1843; opposed extension of slavery in 1826 and thereafter; leader of the society of friends; wrote many books on legal and religious subjects; died at Bedford, N. Y., October 14, 1858.





candidates at that time for the Presidency of the United States, there was not one more fit than he, if indeed there was any other quite so fit.

Yet because of that very fitness he was doomed to defeat. Had he been less high-minded, had he been less a statesman and patriot and more a politician and partisan, he might have succeeded. For in that case he might have placated Ambrose Spencer, and have held Martin Van Buren true in his interests. As it was, he was openly opposed by the one and was betrayed by the other; and they were the two most influential politicians in the State at that time. If it be not unkind to advert to one of the frailties of a great man, what we have said of his relations with Van Buren may be repeated concerning those with Madison.

There were in 1816 three principal candidates for the Presidency: Tompkins, Monroe, and Crawford. Morally, Tompkins was by far the best of the three. For while the others were men of generally high character, it is impossible to forget the discreditable performances of Monroe while he was Minister to France, or the disingenuous—to use no harsher term—intrigues of Crawford in the Monroe cabinet, as a result of which there were entailed upon us the Texas controversy and the Mexican War. Intellectually, Crawford may have outranked the others, though his margin above Tompkins was certainly not large. Monroe surpassed the others in “practical politics,” but was objected to by many because his election would mean the continuance of the “Virginia dynasty.”,

We have said that Madison at first desired Tompkins to be his successor. He had that in mind when he asked the Governor to become Secretary of State. He continued to cherish the same design for a time after Tompkins's patriotic declination of that invitation—partly because of gratitude for the simply incalculable services which Tompkins rendered to him in the support of the war, and partly because of his personal dislike of Monroe. But by the beginning of 1816 his sentiments, or least his purposes, had changed. He was still grateful to Tompkins, but he could have no further need of his services—and has not a cynical philosopher told us that gratitude is an anticipation of favors yet to come? He disliked Monroe, but after all Monroe was a Virginian. So presently the word went forth that Federal office-holders everywhere were to support Monroe's candidacy, and that those in New York were to attack and discourage the candidacy of Tompkins. Thus Solomon Southwick was appointed postmaster at Albany for the chief purpose of having him revile and lampoon Tompkins and laud and support Monroe in his paper, the *Register*.

Van Buren's part in Tompkins's defeat was considerable, though it was veiled in subtlety, as were most of the political acts of that past master of furtive and devious intrigue. He did lead the Legislative caucus to direct the Representatives to support Tompkins. But when the caucus met he saw to it that the New York members did not fulfill the instructions of the Legislature. Had they solidly and aggressively declared themselves for Tompkins, he might have been nomi-

nated. Instead, they "played a waiting game," declining to commit themselves until they could ascertain the general drift of sentiment. The outcome of it was that nobody knew or cared how they finally voted, and again, as had happened several times before from similar causes, the influence of the greatest State in the Union was frittered away into nothingness. Whatever Tompkins, in the magnanimity of his generous nature, may have thought of Van Buren's performance, there was no question what Tompkins's successful rival thought of it. Monroe felt that he owed his nomination to Van Buren, and acted upon that feeling.

Ambrose Spencer was from first to last an outspoken advocate of the nomination of Crawford. That was not because he had any special predilection for the Georgian. But he was bitterly opposed to Tompkins, and he did not deem it good policy to support Monroe because of the widespread antipathy to the "Virginia dynasty" which prevailed throughout New York, save among the Federal office-holders. For that antipathy there was of course good cause. For six terms out of seven, for twenty-four years out of twenty-eight, the Presidency had been occupied by a Virginian. It was high time for a President to be chosen from some other State, and from a northern State. Indeed, New York, which by this time had passed Virginia and become the first State of the Union in population, might well have been regarded as entitled to the honor, which a majority of the other States would have ungrudgingly accorded to it. But as had been the case once or twice before, and as has been the case several times since,

New York's interests were sacrificed by jealousies and factional or personal animosities among New Yorkers themselves. So on grounds of personal spite Judge Spencer, the most powerful political leader in the State, threw all his influence against the New York candidate and in favor not, indeed, of a Virginian, but of a man from still farther south. In this Spencer was aided by John Armstrong, who of course was bitter against Madison and Monroe as well as against Tompkins.

It was indeed due to the influence and the intrigues of Spencer that Van Buren was enabled to play his double game with the Congressional delegation. For while Van Buren could control the Legislature, the Representatives in Congress took their orders from Spencer. While, therefore, they were instructed by the Legislature to support Tompkins, they were instructed by Spencer to support Crawford. Between the two, they were quite willing to do nothing. When the members of Congress assembled at Washington and the time arrived for the caucus, an informal canvass showed that Crawford was decidedly in the lead. "I have not a particle of doubt," says Jabez Hammond, who was very intimately concerned in the whole business, being himself one of the New York Representatives in Congress, "that as between Crawford and Monroe, a majority were in favor of the former." But the administration faction, favorable to Monroe, quickly and energetically busied itself and secured postponement of the caucus until "influence" of some sort could be applied to enough members to make a majority for



Monroe. The result was, when the caucus was finally held, that Monroe received 65 votes and Crawford 54. None were cast for Tompkins.

That this was a bitter disappointment to Tompkins goes without saying. Nor can it be denied that he had ample ground for feeling that he had been betrayed by those of his own household. But just as in the hour of his greatest power and triumph he had been magnanimous and generous to his foes, so in the hour of adversity and betrayal he exhibited an admirable equanimity. A smaller man would, in those circumstances, have refused with resentment the "consolation prize" of the Vice-Presidency, which was offered to him. And indeed even he might not unworthily have declined it, preferring to remain as Governor of New York. But he was unwilling to incur even the appearance of pique, and he had already expressed his disinclination to serve longer as Governor, and therefore he unhesitatingly accepted the nomination for Vice-President. That did not, however, require his immediate retirement from the Governorship, to which, as we have seen, he was reëlected for his fourth time in the spring of 1816.

At that election, because of the personal popularity and prestige of Tompkins, the Democrats regained the strength in the Legislature which they had lost in the preceding year. New York City returned to the Democratic ranks, and that party thus secured more than two-thirds of the members of the Assembly. All the Senators elected were Democrats, excepting those from

the Eastern district; a result which was in part due to its reapportionment of the State which had been made, and which had transferred Albany, Otsego, Schoharie, and Chenango counties to the Middle district.

The new Legislature, the Fortieth, met in special session on November 5, 1816, for the choice of Presidential Electors. David Woods, Democrat, was chosen Speaker by 84 votes to 33 for James Emott, Federalist. The Governor's address betrayed no trace of political feeling, but was confined to a few non-political topics, chief among them being the very urgent need of prison reform. As a result of his wise recommendations the Legislature enacted a measure providing for the employment of convicts at useful labor, not alone in shops within the prison walls but also on the roads and canals in various parts of the State. The session was adjourned on November 12.

The regular session of the same Legislature began on January 14, 1817, and the Governor's address, the last which Mr. Tompkins was to deliver, was devoted to the one subject of the abolition of slavery, a reform which he advocated with convincing earnestness. Following his enlightened leadership the Legislature enacted a bill providing, in exact accordance with his recommendation, that on and after July 4, 1827, human slavery should forever cease and be abolished in the State of New York. This was the crowning achievement of Governor Tompkins's administration as the Chief Executive of New York, and to it he is entitled to full, sole, and absolute credit, despite the fact that

the dilatory Legislature delayed actually passing the measure until after he had presented his resignation of the Governorship. We must, of course, remember with gratitude the men who had for some time been advocating that great reform, conspicuous among them being Cadwallader D. Colden, William Jay, Peter Augustus Jay, and several leaders of the Society of Friends. But all their efforts would have failed, or at least would have been indefinitely postponed, had it not been for the sympathetic coöperation and leadership of Daniel D. Tompkins.

It was one of the most lamentable tragedies of New York politics that this achievement—Hammond, who had little love for him, calls it “godlike”—was not permitted to be the final act of Tompkins in public life. He himself intended it to be, at least so far as this State was concerned. Martin Van Buren, indeed, considered a plan, quite characteristic of himself, to have Tompkins retain the Governorship while serving as Vice-President. There was apparently no constitutional or legal prohibition of such an arrangement. But Tompkins rejected the suggestion with scorn. On February 24 he sent to the Legislature his resignation of the Governorship. It was accepted, of course, and each house adopted resolutions appreciative of his services to the State. These might be described as laudatory, though it was not possible for any praise to be too high for a character and a career which thus far, during many years of more than ordinarily strenuous labors and conflicts, had been “without fear and with-

out reproach." From Albany he passed to Washington, where he greatly adorned the Vice-Presidency of the nation and the presidency of the United States Senate.

A little later, partisan spite hawked at him and maligned his character with abominable insinuations, and partisan exigencies dragged him back into the ruck of factional strife, with the result that his life was clouded with trouble and disaster and was untimely ended. Upon those lamentable occurrences we must hereafter touch in their due order. They were an unwelcome epilogue to a great career which logically ended in February, 1817.

Meantime, the certainty that Tompkins would resign the Governorship had caused much perturbation among the politicians of the State, and particularly in Tompkins's own wing of the Democratic party, of which Van Buren was the leader. This was due to the prospect that DeWitt Clinton would return to activity and to power, and become Governor of the State. That extraordinary man had lately been, as we have seen, expelled from office and practically ruined in his private fortunes. But at the irresistible demand of the public he had been made the head, in January, 1816, of a new Canal commission, which went to work so efficiently as greatly to restore his prestige and to recommend him to popular favor. Then a reconciliation was effected between him and Ambrose Spencer, partly through the mediation of Mrs. Spencer, who was Clinton's sister, and partly because Spencer realized that he needed Clinton's aid in his own fight with



Tompkins and Van Buren. So it came to pass that when the Legislature of 1817 met, it was found that there was a formidable sentiment in favor of Clinton for the Governorship.

That was the circumstance which moved Van Buren in desperation to consider the plan of having Tompkins hold two offices. Finding that Tompkins would not listen to that, Van Buren resorted to another device which in later years would have been adopted as a matter of course, but which then, under the old Constitution, was of dubious propriety and legality. That was, that the Lieutenant-Governor should act as Governor for the remainder of the term. That, of course, is what would be done to-day. It was what one clause of the old Constitution apparently contemplated, providing that the Lieutenant-Governor should exercise all the functions of the office of Governor "until another be chosen." So Van Buren urged that the Lieutenant-Governor should serve until the next regular time for a Gubernatorial election. But another clause of the Constitution provided that as often as the Governorship became vacant some one should be elected to fill it. Reluctantly, therefore, Van Buren accepted the inevitable; and the Legislature passed by overwhelming majorities in both houses a bill which had been suggested by Tompkins in his letter of resignation, providing for the election of a new Governor at the April election of 1817.

Meantime, of course, John Tayler, the Lieutenant-Governor, exercised the functions of the office from the date of Tompkins's resignation to that of the instal-

lation of his elected successor. Mr. Tayler was a man of limited education but of high character and fine natural intelligence and shrewdness. He did not regard himself as having succeeded to the Governorship, and never took the oath of office as Governor, but served as Acting-Governor under the Lieutenant-Governor's oath. He was always described in official documents during the four months of his incumbency as Lieutenant-Governor, though Federal officials appear to have addressed him as Governor.

The most important act of the Fortieth Legislature after the resignation of Governor Tompkins and the enactment of the emancipation measure which he had urged, was that of April 15, 1817, which fully committed the State to the canal project which DeWitt Clinton had been urging. That was adopted by practically a two-thirds vote of both houses, those in favor of it being Clintonian Democrats and Federalists, and those in opposition being the Tammany Democrats of New York City and Van Buren's followers elsewhere. Of course its adoption was a great triumph for Clinton and materially strengthened his campaign for the Governorship, which was then drawing to a close. The Legislature adjourned without day immediately after the passage of that bill.

The new Council of Appointment was elected on February 13, and in its composition was another triumph for Clinton. Its members were Walter Bowne of the Southern, John Noyes of the Middle, John I. Prendergast of the Eastern, and Henry Bloom of the Western district. The first-named was under the

influence of Tammany Hall, and was in consequence unfriendly to Clinton, but the others were all followers of Judge Spencer, and in consequence, upon his reconciliation with Clinton, became staunch supporters of the latter. Only one important change in office was made, but of course such influence as was exerted by the Council through its patronage was favorable to Clinton. The one change referred to was the removal of Robert Tillotson from the office of Secretary of State and the appointment of Charles D. Cooper in his place; which was done while Mr. Bowne was absent from a meeting of the Council. Mr. Tillotson had filled the place admirably and Dr. Cooper filled it admirably after him. There was no political reason for the change, or any public reason, but it seems to have been made solely because Dr. Cooper had married the adopted daughter of Lieutenant-Governor Tayler, who at that time, as Acting-Governor, was president of the Council. It was simply a bit of nepotism and "honest graft."

## CHAPTER XIX

### THE TRIUMPH OF CLINTON

**D**E WITT CLINTON, we have said, "knew to bide his time," and his time came at last. It began to dawn in the fall of 1815, when a great meeting of merchants and other citizens of New York City was held to promote the scheme of a canal system connecting the Hudson River with Lake Erie and Lake Champlain. It was largely due to Clinton's former advocacy of such a scheme that the meeting was held. It was the sprouting of the seed which he had planted. Fittingly, therefore, he came from his rural retirement and was called upon to address the gathering. He did so in a masterly manner, setting forth not only the feasibility of the plan from an engineering point of view, but also the financial arrangements necessary for its achievement. With moving eloquence he declared that the canal, in the extent of its route, the counties which it traversed and connected, and the consequences which it would produce, would be without a parallel in the history of mankind. "It remains," he said, "for a free State to create a new era in history, and to erect a work more stupendous, more magnificent, and more beneficial than has hitherto been achieved by the human race."

In that, as the event showed, there was no exaggeration; and such was the contagious power of Clinton's eloquence that he was able to impart to others his splen-



did vision. The meeting in New York adopted a powerfully-worded memorial to the Legislature, and appointed Clinton chairman of a committee to present it to that body personally. His journey from New York to Albany resembled the progress of a triumphant monarch, with great mass-meetings and favorable memorials at every town, and when he reached Albany and presented the address from the New York meeting the Legislature could do nothing else than create the new Canal commission which was asked for and make Clinton its head.

A year later Clinton was able to present the commission's report of the canal project, in finished form and at the psychological moment. The Champlain canal was estimated to cost only \$871,000. The Erie canal was a stupendous work. It was to be 350 miles long and forty feet wide, with no fewer than seventy-seven lifting locks, and its cost was estimated at \$4,571,813. The sum needed for both was nearly five and a half million dollars, a huge sum for those times. But Clinton confidently declared that the funds could be obtained by a loan, which could be repaid from the profits of the canals without a dollar of taxation upon the State. We have seen that he was not a successful financier in his personal and domestic affairs. In this great public business he showed himself a master of finance. He impressed the Legislature with the soundness of his views, and in consequence that body enacted the measure to which we have already referred, committing the State to the undertaking.

That action, taken less than a fortnight before the election of a successor to Governor Tompkins, would in itself have been enough to assure Clinton's triumph at the polls in almost any circumstances. But long before that action his election was amply assured. Down to this time candidates for the Governorship had been selected by legislative party caucuses. But early in 1817 Judge Spencer, acting in Clinton's interest, organized a strong and successful revolt against that system, and in favor of a general State nominating convention. The argument in favor of the change was sound and quite unanswerable. Many of the counties, it was pointed out, were represented in the Legislature by Senators and Assemblymen of a single party. Thus their citizens of the other party, who might be very nearly a majority, were left without representation. If a certain county were represented in the Legislature by none but Federalists, its Democratic citizens would have no voice whatever in the selection of a candidate for Governor.

There can be little doubt that this argument was put forward and the change of nominating methods was demanded by Judge Spencer chiefly, if not solely, in the interest of Clinton. Although Spencer had secured the election of three out of four members of the Council of Appointment, he was very doubtful whether he could get a majority of the Democratic legislators to vote for Clinton's nomination for Governor, though he felt quite sure that he could get a majority of a popular State convention to do so. Accordingly, as early as February 4 a convention was held at Albany,

at which it was resolved that at least in all counties which had no Democratic representatives in the Legislature there should be appointed Democratic delegates, either to a general State convention of such delegates from all counties, or to the legislative caucus of Democratic Assemblymen from other counties; and three delegates were appointed. The example of Albany was followed by other counties, and on March 25 the first State convention in New York for nominating a Governor was held, at Albany.

In advance of this there was much activity. Spencer and the Clintonians were of course working earnestly for Clinton. On the other hand, Van Buren and the Tammany managers in New York City were desperately setting about to find somebody to beat him in the convention. Their first choice was Joseph C. Yates, one of the Justices of the Supreme Court, and a second cousin of Robert Yates, the former Chief-Justice. He was a man of fine character and ability, and of much personal popularity, and had specially commended himself to the State by being the chief founder of Union College. But he possessed the same trait of political changeableness which had been so conspicuous in his kinsman, who had been a Federalist candidate for Governor in one election and an Anti-Federalist candidate for the same office in the next. Joseph Yates had once been a strong Clintonian, supporting DeWitt Clinton for the Presidency of the United States. Then he had become an equally strong supporter of Tompkins, at a time when the estrangement between him and Clinton was so great that to be

a friend of one was almost necessarily tantamount to being a foe of the other. However, Yates was probably never really hostile to Clinton. It is certain that he was always a hearty supporter of the canal scheme. Van Buren's scheme was thus to put forward a former and probably present friend of Clinton as Clinton's rival, in hope of thus drawing away others of Clinton's friends; and although the opponents of Clinton were supposed to be opponents of his canal scheme, he would put forward a friend of the canals in order to win support from the canal party in his campaign against the canal leader!

There never was a political intrigue more thoroughly characteristic of Van Buren's tortuous mental processes than this, and never was one more completely unsuccessful. Not one of Clinton's supporters was lured away by it, while many of Van Buren's own anti-Clinton contingent were so enraged at being asked to support a Clintonian that they deserted him and went over to the other side, declaring that if they were to support any Clintonian it would be Clinton himself. As for Judge Yates, he gave the scheme no countenance, but some days before the meeting of the State convention declared that in no circumstances would he accept a nomination for Governor.

At that, Van Buren turned to Peter B. Porter. Him we have already heard of as a man of splendid parts, one of the few real heroes of our army in the War of 1812, and Secretary of State of New York. There could scarcely have been a worthier candidate for Governor than he. Yet there was a certain incongruity in





JOHN TAYLER

John Tayler, 6th governor (1817); born in New York City, July 4, 1742; in 1760 removed to Lake George, subsequently to Oswego; member of council between whites and Indians; member of provincial congress in 1776-1777 and of council of safety, 1777; member of assembly from Albany at 1st, 2nd, 4th, 9th and 10th sessions, 1777-1787; canal commissioner, 1792; county judge, 1797; regent, 1802; state senator, 1802, 1804-13; capitol commissioner, 1804; lieutenant governor, 1811, 1813-17; vice chancellor, 1814; acting governor, February 24-July 1, 1817 in place of Daniel D. Tompkins, elected vice-president; chancellor, 1817; at his table Hamilton made comments which provoked challenge from Burr; died at Albany, N. Y., April 19, 1829.



his being put forward as the opponent of Clinton by a leader who relied for support chiefly upon Tammany Hall, for Porter was as ardent an advocate of the canal as Clinton himself, and he refused to have any fellowship with Tammany Hall or even to recognize its support of himself. However, General Porter was ambitious and assented to the presentation of his name in the convention. He was overwhelmingly defeated, so badly that it appeared that he would have been defeated if the nomination had been left solely to the Legislature. The convention was composed of 93 members of the Legislature and 32 delegates from the counties which had no Democratic representation in the Legislature. Of the members of the Legislature 60 voted for Clinton and 33 for Porter; and of the delegates 25 for Clinton and 7 for Porter.

DeWitt Clinton was thus the regular candidate of the Democratic party, and was frankly accepted as such by Van Buren and all others excepting Tammany Hall and a few personal enemies of Clinton, who controlled few if any votes but their own. He was also the candidate, in effect, of the Federalists, who nominated no candidate of their own and many of whom, led by Jonas Platt, the former candidate for Governor and at this time a Justice of the Supreme Court; William W. Van Ness, also a Supreme Court Justice and one of the most brilliant men in the State; and Jacob Van Rensselaer, a consummate political leader and former Secretary of State, openly spoke and diligently worked in Clinton's behalf. This support was

given to Clinton by the Federalists largely because they were as a party strongly in favor of the canals and a general system of State aid for public works.

Tammany Hall, however, was implacable in its hostility to Clinton and to the canal. Whether it was against him because of his canal scheme, or against the canal scheme because it was his, is not altogether clear. Certain it is that it went to the extreme of violent ridicule and denunciation of both, and when he won the nomination it openly bolted the result of the convention and announced its purpose to support General Porter. Of course General Porter did not sanction its support of him, and declined to consider himself a candidate, though he was powerless to prevent Tammany from distributing in every part of the State its ballots with his name printed upon them. In this campaign the Tammany men who had thus bolted the regular party wore bucks' tails as badges on their hats, and thus became historically known as the "Bucktails" or Bucktail party. The result of the election was of course a foregone conclusion, and was more overwhelming than that of any other in the history of the State. DeWitt Clinton received 43,310 votes, of Democrats and Federalists alike. Porter received 1,479 votes, of the "Bucktails" of Tammany Hall. Mr. Tayler was by a similar vote reëlected Lieutenant-Governor. The Democrats secured all the Senators who were chosen that year, and a strong majority in the Assembly.

This was a victory at the polls unique in New York history. Unsurpassed, if not unrivalled, also was



Clinton's moral victory. Only a short time before he had been beaten, humiliated, expelled from office, and all but ruined in his personal estate, as few men have ever been. Now he was at a stroke placed in the highest office in the State, and not as the result of political intriguing but by a practically non-partisan uprising of the people because of their recognition of the superlative value to them of a project with which he had identified himself and upon the success of which he had staked his political all. We have said that the splendid climax of Tompkins's career was attained at the moment of his resignation of the Governorship. It might with similar propriety be said that DeWitt Clinton attained the summit of his career upon his election to the Governorship, or perhaps at his inauguration as Governor on July 1, 1817, and his beginning actual construction work on the Erie canal three days later. There were many notable passages in his record thereafter, but there were also many regrettable blunders, so that he never again stood quite where he did in those triumphant days when the people of the State recalled him from retirement and made him their Chief Executive with a mandate from them to build the canals which he had planned.

Beyond doubt he showed himself a great constructive statesman, one of the ablest that ever filled the Governorship of the State. Yet he was never able entirely to lose the politician in the statesman, or to subordinate his own personal feelings to his public duties. It should have been obvious to him, as it was to others, that his enormous majority over General

Porter was due to the fact that those who were opposed to him did not vote at all. That is demonstrated by the figures. He had 43,310 and Porter 1,479 votes, a total of 44,789. But those were scarcely half of the voters of the State. In the preceding election of 1815 Tompkins had received 45,412 and King 38,647 votes, a total of 84,059. The fall from 84,059 to 44,789, though there had been a natural increase in the number of qualified voters in the State, shows how many thousands and tens of thousands declined to vote for Clinton, though there was nobody else to vote for. As a matter of fact, Clinton, despite his enormous majority, actually got fewer votes than Tompkins had got in 1815. It is probable that the bulk of his support came from Federalists. The majority of Democrats throughout the State would not vote for him, but they would not follow the example of Tammany in bolting the regular party nomination and voting for Porter, so they did not vote at all.

A more politic politician, or one less self-willed, would have recognized this fact and its significance, and would have done what he could to conciliate his own party and to win its support. Not so Clinton. He made no overtures whatever to Van Buren and his followers, not even to the latter when some of them parted company with Van Buren and showed a readiness to become followers of Clinton. He was of course loyal to and appreciative of his old friends. But he in a notable manner cultivated intimacy and confidence with those Federalist leaders who had favored his election, such as Justices Van Ness and Platt, and

Thomas J. Oakley. This course he justified by saying that party lines had become so broken and principles so undefined and mixed that there was little difference between them, and that there would in the near future inevitably be a general reorganization and realignment of both parties. In that he was quite correct, as subsequent events showed; but it was poor politics for him so openly to act upon that principle.

Soon after his inauguration he called the Council of Appointment together, and there was general expectation that sweeping changes would be made. In fact there were very few, and there were only two that were purely political in character. The Council late in August removed John L. Broome and appointed Benjamin Ferris as County Clerk in New York, and removed Robert McComb, son of the notorious land speculator, Alexander McComb, and appointed John W. Wyman as Clerk of the Circuit. The men removed were both active members of Tammany Hall and had made themselves conspicuous in the bolt against Clinton's nomination. Many requests, appeals, and demands were made upon him for the removal of other officials and the appointment of his own friends in their places, but he resolutely refused, on the ground that the Council would not countenance such changes. It is probable that he himself deemed it politic to make as few changes as possible. Indeed, he was becoming convinced of the evil of such prostitution of the public service as had so greatly prevailed, and was getting ready to recommend abolition of the whole Council

of Appointment system. His course, however, did not profit him. The office-holders showed him little gratitude for permitting them to retain their places, while the office-seekers were resentful at his refusal to give them the places they coveted.

One noteworthy act of the early part of his administration was the establishment of the custom of observing a yearly Thanksgiving day. This had been attempted by John Jay in 1795, and indeed one Thanksgiving day was then observed. But it met with so widespread disapproval that Governor Jay did not repeat the experiment. People seemed to think that it contained some covert attempt to impose an official state church upon them. But when, in 1817, Clinton designated the second Thursday of November as a day of public thanksgiving, there was general approval, so that the practice was unhesitatingly followed in every succeeding year.

The beginning of the Erie canal was, however, the supreme achievement of the first months of his administration. That gigantic work was undertaken on the Fourth of July, 1817, and before the end of summer Clinton was able to write to a friend that it was proceeding finely. Ten miles of it would be finished that season, and within the estimates of cost and time. This auspicious result was attained by the contractors' use of machinery which, primitive as it was and contemptible as it would seem now, after a hundred years, then seemed as wonderful as the gigantic steam shovels in the Culebra Cut appeared to the astonished specta-



tors of work at Panama. He had inherited the canal scheme from his uncle, he had made it the chief hobby of his life, he had won the Governorship on it as an issue, and now he was "making good."

## CHAPTER XX

### DE WITT CLINTON, GOVERNOR

**T**HE Forty-first Legislature of the State of New York assembled at Albany on January 27, 1818. Having been elected simultaneously with DeWitt Clinton, the Assembly naturally contained a strong majority of his political supporters. As at the polls, this majority was composed partly of Clintonian Democrats and partly of Federalists. So overwhelming was it that no opposition to it was attempted in the organization of the house, and accordingly David Woods, of Washington county, an enthusiastic advocate of the canals, was elected Speaker by ninety-seven votes. No other candidate was named, and the opponents of Woods contented themselves with not voting at all.

The Governor's address was one of the longest, most elaborate, and most statesmanlike that had ever been presented to the Legislature. Indeed, in the scope of its survey of State interests it may well be said to have surpassed them all. Other Governors had discussed two, three, or four salient points, and passed all others over with light mention or none at all. Clinton considered in detail practically every important issue that was before the State, and brought into prominence several the importance of which had not been generally recognized. Naturally he gave prominence to canals and river improvement, but he paid comparable attention to roads, agriculture, common schools, colleges

and professional schools, public lands, prison reform, pauperism, the militia, State finances, banking and currency, and relations with the Indian tribes. From first to last it was free from personalities and factional politics, and was instinct with constructive statesmanship of an elevated and progressive type.

Despite the intense political antagonisms which soon arose, moreover, Clinton's address was effective in securing the enactment of much valuable legislation. During that session the Legislature provided for a four years' course of study for the degree of doctor of medicine. A joint committee of the two houses presented a most interesting and profitable report on the agricultural interests of the State, and recommended the creation of a Department of Agriculture, or Board of Agriculture, as a part of the State government, supplemented by a State Agricultural Society and subordinate agricultural society in each county. A State agricultural fund was to be provided by taking for the purpose fifty per cent. of the license fees of taverns, which fees were to be considerably increased for the purpose, and this fund was to be apportioned among the county societies to provide lectures, prizes at agricultural exhibitions, etc. During the session the new State Capitol was completed at a cost of \$110,685, of which sum the city of Albany paid \$34,200, and Albany county \$3,000. The Legislature adjourned on April 21.

Although DeWitt Clinton was at this time at the height of his power and political prosperity, he was confronted with the most formidable opposition he had

ever known. This opposition was led by the New York faction formerly known as Martling's Men and later as the Tammany Society, or Tammany Hall. All the members of the Assembly from New York county belonged to that faction, and with the single exception of Cadwallader Colden they were all intensely hostile to Clinton. In view of the fact that the Erie canal became one of the chief contributors to the growth, the wealth, and the general greatness of New York City, there is a bitter irony in the recollection that these New York City representatives were resolutely opposed to that enterprise, and indeed that their hostility to Clinton was chiefly based upon his advocacy of that and other great plans of internal improvement for the State.

But the opposition to Clinton was not confined to New York City. Other Democrats, throughout the State, allied themselves with the Tammany contingent. They were not members of the Tammany Society, and did not wish to be called by its name. But they adopted the name of a piece of the Tammany insignia. Members of that order on some occasions wore the short tails of buck deer in their hats, in lieu of cockades, and these, as already stated, were used as a campaign badge in 1817; wherefore the anti-Clinton faction became known as the Bucktail party. The name was given to it by the Clintonians in derision, but it was soon accepted and came into general use by both friends and foes of Tammany. Although, as already stated, the Bucktails in the Assembly were so few that they made no contest over the Speakership, they comprised some men of



commanding ability, including Ogden Edwards, Clarkson Crolius, and Erastus Root. In the Senate the faction was much stronger in numbers. It comprised thirteen of the twenty-seven members of that house, led by Martin Van Buren, while there were only seven who could be counted upon to support the Governor. Seven other Democrats were neutral, and the remaining five Senators, led by Abraham Van Vechten, were Federalists.

Great interest centered, as usual, in the election of the Council of Appointment. As the Assembly had a strong Clintonian majority, its inclination was to choose a Council composed of the Governor's friends. This, however, was not possible, for the reason that it was necessary to select one Senator from each of the four districts, and there was not a Clintonian Senator in each of them. Van Buren, one of the most adroit of wirepullers and conspirators, wished to have a Council chosen which should be nominally favorable to Clinton, so that he would be popularly held responsible for its acts, and yet which should in fact be by no means subservient to him. In this design the "Fox of Kinderhook," as Van Buren began to be known, was successful. The practice was for the Assembly to elect Senators to the Council who had been selected by caucuses of the Assemblymen from their respective districts. From the Southern district the Tammany men, or Bucktails, unhesitatingly designated a bitter anti-Clintonian in the person of Peter R. Livingston. In the Eastern district there was only one Senator who professed to be friendly to Clinton. That was Henry

Yates, who was duly elected. But his brother, Judge Yates, was already chosen as the anti-Clintonian candidate for the Governorship at the next election, and he accordingly was drawn away from support of the Governor. In the Western district there were two Clintonian Senators who were candidates for the Council and who persisted in their rivalry, with the result that neither won, but Henry Seymour, an opponent of Clinton and a close friend of Van Buren, was chosen. In the Middle district the Senator chosen was Dr. Jabez D. Hammond, the historian, a supporter of Clinton. In the last analysis, therefore, the Council stood two resolutely against Clinton, one for him, and one nominally for him but in fact increasingly hostile to him.

One of the first appointments made by the Council was that of Cadwallader D. Colden to be Mayor of New York. Although he was a Bucktail he was friendly to Clinton. He was not Clinton's first choice for the place, but was accepted by him when Dr. Hammond informed him that it would be impossible to elect Sylvanus Miller, whom the Governor preferred. Peter C. Van Wyck and other Clintonians were restored to the places which they had formerly held but from which they had been removed by a preceding Council. Josiah Ogden Hoffman, long a leading Federalist but now a warm supporter of Clinton, sought appointment as Recorder of New York, in place of Richard Riker, but to this Mr. Yates would not assent, and it was not done. A demand of Clintonians for the removal of William L. Marcy from the office of Recorder of Troy

was at first refused by Dr. Hammond, but after the April election, at which Mr. Marcy led the Bucktails in opposing the Clintonian candidates, the demand was renewed, and the removal was made by the votes of Dr. Hammond, Mr. Yates, and the Governor. In spite of the strong resistance of Dr. Hammond and the Governor, the other three members of the Council removed Dr. Cooper from the office of Secretary of State and appointed John Van Ness Yates in his place.

The dissatisfaction, not to say disgust, with which the conduct of the Council of Appointment was regarded inclined an increasing number of thoughtful citizens to seek some means of abating an abuse which day by day was becoming more detrimental to good government. The conviction became widespread that the scheme of the Council, however well meant and however good it might be in ideal conditions, was in existing conditions mistaken and incompatible with good government, and that its abolition was demanded for the welfare of the State. A motion to that effect was made during the legislative session of 1818 by Ogden Edwards, an Assemblyman from New York—a son of Pierpont Edwards and afterward a Justice of the Supreme Court. He was a leader of the Bucktails and an opponent of Clinton. He introduced a bill calling for a Constitutional convention, not for a general revision of the Constitution but solely for considering and revising such parts of that instrument as related to the appointment of officers. The fate of this measure obviously depended upon the Governor, whose wishes were law to a majority of the Assembly, and

many of his best friends strongly advised him to give the word for its adoption. They pointed out to him the increasing evils of the Council system, which indeed nobody realized better than himself, and the certainty of a change in the method of appointment before much more time should pass, and they urged upon him both the public policy and the political expediency of his identifying himself with the reform. But Clinton would not listen to them. The bill had been introduced by a Bucktail, and that was enough to damn it in his sight. So his followers in the Assembly voted against it and it was defeated.

In the April elections of 1818 the Clintonians were generally successful and the Governor retained a strong majority of the Assembly. In New York City, however, the Bucktails were triumphant by a majority of more than a thousand, a large majority for those days. In the Senate, too, Clinton made marked gains. In the State as a whole the Clintonian votes outnumbered the Bucktail by many thousands. Nevertheless the Bucktails, under the adroit and not over-scrupulous management of Van Buren, contrived to create the widespread impression that they were in the majority of the Democratic party, and that Governor Clinton and his followers were merely a dissenting and disloyal minority, and this impression was greatly strengthened, if not justified, by the course of the Clintonians in the organization of the next Legislature, in January, 1819. That body met on January 5, an act in 1818 having changed the date of meeting from the third



to the first Tuesday of January, and the Assembly was immediately involved in an embittered contest over the election of a Speaker.

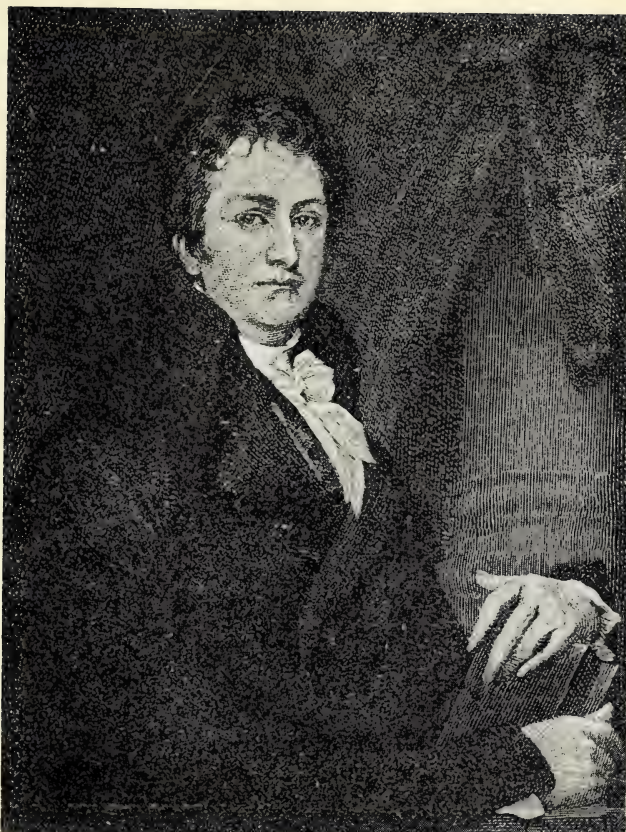
The Governor and his followers, though commanding a majority of the Assembly, appear to have fixed upon no candidate for that place until the very last moment. There had been a general expectation that John Van Ness Yates, who had been elected from Albany, and who was not strongly attached to either faction of the party, would be elected without serious opposition. But the very day before the Legislature was to meet Clinton and his chief adviser, Ambrose Spencer, decided that Yates would not do. He could not be depended upon to stand with them against the Bucktails. So they dictated the election of General Obadiah German, who had just been reëlected to the Assembly after an interval of many years. There is reason to believe that General German himself opposed, or at least disapproved, his candidacy. He was unpopular. He had as a Senator in Congress opposed the War of 1812 and had voted against some of the measures for its prosecution. He had signed the address opposing the election of Tompkins in 1813. He had, finally, been elected to the Assembly in April, 1818, by Federalist votes, in opposition to the regular Democratic candidate. A worse choice for the Speakership, from the point of view of political expediency, could scarcely have been found.

Clinton and Spencer, with amazing fatuity, made no effort to secure support for German in advance of the meeting of the caucus, on the evening of January 4. At

that meeting seventy-five members were present. These included every Bucktail member, while a dozen or more Clintonians had not yet arrived at Albany. The Clintonian leaders had made no effort to secure a full attendance, apparently because they did not expect a contest. They had not been informed of Clinton's plan to spring General German upon them, but supposed that Yates would be the unopposed candidate. Meantime the Bucktails had been secretly but most efficiently preparing for the contest. They made sure that every one of their men was on hand, and they secretly pledged them all in advance to the support of a candidate whom Van Buren had selected. This was William Thompson, who had served in the Assembly for several years from Seneca county—a young lawyer of good repute and considerable ability, and of much personal magnetism. His candidacy was not made known until the assembling of the caucus.

The Clintonians were thus doubly surprised, first at having the unacceptable candidacy of General German forced upon them by Clinton, and second at being confronted with the formidable candidacy of Mr. Thompson. There was no time to remonstrate or argue with the Governor, and of course none to secure the attendance of their absent colleagues. The result was that the Bucktails controlled the caucus, and Mr. Thompson was nominated by it for Speaker, by forty-two votes to thirty-three for General German. Had the absent Clintonians been present, German would have won.

It was of course morally incumbent upon the Clintonians to abide by the result of the caucus, and they



DEWITT CLINTON

Dewitt Clinton, 7th and 9th governor (1817-22), (1824-28); born in Little Britain, Orange county, March 2, 1769; lawyer; private secretary to George Clinton, his uncle, 1797; member state legislature 1798-1802, 1806-1811; United States senator 1802; mayor of New York city 1803-1807, 1808-1810, 1811-1815; candidate for president against James Madison, 1812; governor, 1817-22; father of the Erie canal; reëlected governor, 1824; opened canal, October 26, 1826; died in office February 11, 1828.





probably would have done so had they not been commanded by Clinton and Spencer to do otherwise. During the night more Clintonian Assemblymen arrived, and orders were issued that they should disregard the caucus and vote for General German. Accordingly that course was pursued at the assembling of the house on January 5. The Clintonians voted for German, the Bucktails for Thompson, and the Federalists for William A. Duer, of Albany. None of the three received a majority, which was necessary for election, though because of the arrival of the absentee Clintonians more votes were cast for German than for Thompson. After four ineffectual ballots the Assembly adjourned to the next day. The fifth ballot, on January 6, showed 55 votes for German, 38 for Thompson, and 20 for Duer. Then Erastus Root offered a resolution that further balloting be dispensed with and that Mr. Thompson be appointed Speaker. This was rejected by a vote of only 41 ayes to 72 nays. A similar motion followed in behalf of Mr. Duer, and was lost by 31 to 82. Again such a motion was made, in behalf of General German, and was adopted, by the vote of 67 to 48. Nominally it was a victory for Clinton. In fact, it was far worse than a defeat. His course in causing his followers to repudiate the result of the regular party caucus confirmed the charges of Van Buren and the Bucktails that he was not a loyal Democrat, and his imposition of so unpopular a man as General German upon the Assembly as Speaker alienated many of his former supporters and caused many more to question the wisdom of his leadership.

At the opening of the Forty-second Legislature, in 1819, Governor Clinton delivered another long, scholarly address, instinct throughout with fine constructive statesmanship and presenting an extraordinary contrast to the wretched factional politics in which he had just been engaged. He discussed the canal question at great length, and also devoted much attention to agriculture, education, hospitals and asylums, the militia, the protection of negroes and Indians in their civil rights, prison reform, and banking and currency. His recommendations concerning prison reform were not altogether in the direction of leniency to evil-doers, and it is interesting to recall that a part of the response of the Legislature was to enact a measure providing for the flogging of criminals with not more than thirty-nine strokes of the lash, for solitary confinement on a diet of bread and water, and for placing prisoners in stocks.

From a political point of view the chief business of this session of the Legislature was the election of a United States Senator to succeed Rufus King, whose term was to expire in March. Governor Clinton was strongly antagonistic to Mr. King and was opposed to his reelection; facts which were reflected in the course of John A. King, the son of Senator King, who as a member of the Assembly voted persistently against General German for Speaker. This deprived Clinton of much of the Federalist support which he had been receiving, and which otherwise he might have counted upon in any case against the Bucktails. But Van Buren and his aids industriously put forward the suggestion,

indeed the charge, that Clinton was in fact strongly in favor of Mr. King, and that his apparent opposition to him was merely assumed for the purpose of deceiving good Democrats. This falsehood, ingeniously and plausibly propagated, was widely believed, and deprived the Governor of much Democratic support. In these circumstances the Federalists resolved to vote for the reëlection of Senator King. The Clintonians selected as their candidate John C. Spencer, son of Ambrose Spencer, a young man of splendid ability, who in a single term in Congress had placed himself among the national leaders, and who was destined to become a cabinet minister and a Justice of the Supreme Court. The Bucktails fixed upon Samuel Young, a competent lawyer and one of the most brilliant orators of his time, remembered as one of the few who ever held their own in controversy with the great Chancellor, James Kent. Seldom had three more noteworthy men been put forward at the same time for a United States Senatorship.

The joint session for election of Senator was to occur on February 2. In advance of it a caucus of the Democratic members was held, including, for the last time, both Clintonians and Bucktails. Van Buren meant it, in advance, to be the last. He had no thought of its performing the duty of a caucus in the selection of a candidate, knowing full well that the Clintonians would have a majority. He intended instead that it should foment an open breach between the two factions, and thus, as he hoped, "read Clinton out of the party." In that he succeeded. The moment the caucus was



opened Bucktail after Bucktail took the floor with bitter aspersions upon Governor Clinton, and indirectly upon Obadiah German, whom Clinton had forced upon the Assembly as Speaker. These attacks had their intended effect in provoking an angry reply from German, who was blunt and forceful but not at all a tactful orator. To this, in accordance with design, Peter R. Livingston, a Bucktail leader, made still more acrimonious retort, which provoked another outburst from German, and the caucus was on the point of becoming a free-for-all fight when, on the motion of another Bucktail, John T. Irving, it adjourned. Thus no nomination was made, although the Clintonians were in the majority and could have nominated whom they pleased had they only kept their heads and not been led into the Bucktail trap of getting into a wrangle and then adjourning.

That episode completed the breach between the two factions, and they never again united in a caucus. The Clintonians held another caucus a little later, and nominated John C. Spencer. But Van Buren and his followers insisted that as the Clintonians had formerly bolted the Speakership caucus, and had now adjourned a caucus in which they had a majority without making a nomination, only to hold a factional caucus later, they must be regarded as having withdrawn themselves from the Democratic party and as being no longer entitled to recognition as members of it.

Another result of the episode was that New York was for a time permitted to have only one Senator at Washington. The Legislature met in joint session on Febru-



ary 2, 1919, for the election of a Senator. The Clintonians voted for John C. Spencer, and gave him 64 votes. The Bucktails supported Samuel Young with 57 votes. The Federalists gave Rufus King, for reëlection, 34 votes. So intense was factional feeling that it was generally recognized that there was no hope of a compromise, and in consequence the joint session adjourned without making an election and did not reassemble. The election of a Senator was thus deferred until the next Legislature should meet in 1820. This result was charged by Senator King and his friends against Governor Clinton, and greatly intensified the aversion which the former had long felt toward the latter. To anticipate the progress of events it may be added that the sequel, a year later, was the unanimous reëlection of Senator King. The Clintonians protested that they did not want him, yet they voted for him. The Bucktails were still more hostile to him, yet under the influence of a most adroit manifesto conceived by Van Buren and framed by William L. Marcy, they voted for him. It was a well-deserved tribute to a man of exceptional merit and ability, though it may not have been so intended. Each faction probably thought that voting for him would be the best way out of an awkward predicament.

Following the complete breach between the Clintonians and Bucktails in the early part of 1819 came an amazing reversal of attitude on the part of the latter faction. Down to that time it had been inexorably opposed to Clinton's canal project and to his other plans of internal improvements. But by this time the far-

seeing leaders of the faction had seen a great light. They saw that in spite of their opposition Clinton's great plans were bound to be realized, to the immense advantage of the State. Their own attitude was like that of Dame Partington trying to sweep back the rising tide of the Atlantic Ocean. Accordingly, without explanation or apology, they suddenly reversed their tactics, accepted the canal and other public works, and vied with the Clintonians in praising and promoting them! The result was that during the session of 1819 the Legislature authorized the Executive to proceed with the construction of the entire line of the Erie canal, from Lake Erie to the Hudson River.

Governor Clinton suffered a defeat, however, in the election of a Canal Commissioner. Joseph Ellicott resigned that office in the summer of 1818, and the place was filled according to law by appointment by the Governor, the appointment to hold good only until the next Legislature could elect. Clinton's appointee was Ephraim Hart, an admirable choice, and the Governor confidently assumed that the Legislature would ratify it by permanent election. But Van Buren, realizing the political influence and patronage of the office, intrigued in his characteristic fashion against Hart, and succeeded in defeating him. Henry Seymour, a man of high character but one of the bitterest enemies of Clinton in the whole State, was elected by the margin of a single vote. That gave the Bucktails a majority of the Board of Canal Commissioners and explained their readiness immediately thereafter to drop their opposition to the canal project and to vote for the construction

of the "ditch from the Lakes to the Sea" which had previously been the favorite butt of their ridicule. It made all the difference in the world whether they or the Clintonians were to have control of the "patronage" of the work.

During this session a highly important bill was enacted for the improvement of the public school system. Chief-Justice Thompson of the Supreme Court was appointed Secretary of the Navy, and Ambrose Spencer was promoted to succeed him. For the vacancy in the Associate-Justiceship thus caused the Federalists put forward Samuel Jones, an eminent lawyer who afterward became Chancellor of the State. Clintonians were more inclined toward John Woodworth, who for several years had been Attorney-General of the State, also an excellent man. Still others suggested the appointment of Martin Van Buren. Finally, it was represented that the existing court was greatly overworked, and that the number of Justices should, in the public interest, be increased; wherefore it was urged that all three, Jones, Woodworth, and Van Buren, should be appointed. To this scheme, however, the Governor was opposed, as were also all the Justices of the Supreme Court; and after protracted discussion the Council of Appointment finally gave the place to Mr. Woodworth.

In the spring elections of 1819 the Federalists ran "straight tickets" wherever they felt sure of success, and elsewhere generally supported Clintonian candidates. In consequence in a number of counties, particularly in

the Middle district, Clintonians were elected although the Bucktails were by far the stronger faction. The net result of the elections was a gain for the Bucktails, though the Clintonians retained a majority of the Assembly.

After the election and after the adjournment of the Legislature, several acts of the Council of Appointment emphasized the increasing approachment between Clinton and the Federalists. One was the appointment of a number of Justices of the Peace, some of whom were Clintonians and some Federalists but none Bucktails. Another was the removal of Richard Riker from the Recordship of New York and the appointment of Peter Augustus Jay in his place. Mr. Riker had once been a close friend of Clinton, but had turned against him when Clinton refused to second his nomination for the Supreme Court but secured instead the appointment of James Platt. Mr. Jay was a son of John Jay, a man of the highest character and ability, whose appointment was generally desired by the bar and the leading citizens of New York irrespective of party. He was, of course, a Federalist. A third incident to the same effect was the removal of Martin Van Buren from the office of Attorney-General and the appointment of Thomas J. Oakley in his place. This was done, undisguisedly, because Van Buren was the leader of the opposition to Governor Clinton; though Oakley was probably the better man for the place, being as good a lawyer as Van Buren and less likely to use his office for partisan ends. Van Buren, believing in the spoils sys-



tem, did not complain at this application of his own principles to his own disadvantage, but his friends in the press raised a great clamor over it and used the incident to emphasize the breach between the two Democratic factions.

## CHAPTER XXI

### THE PASSING OF TOMPKINS

THE legislative session of 1819 witnessed the beginning of the last act in a great tragedy. There was enacted on April 13 a bill requiring the State Comptroller to liquidate and settle the residue of the accounts of Daniel D. Tompkins with the State of New York. During the war, as already recorded, the Governor had been intimately concerned with the public finances of the State. He had personally handled millions of dollars, of both State and national funds, which had been entrusted to him for disbursement for war purposes, largely at his own discretion. Never, perhaps, had a man been thus trusted before. Never, we may confidently say, had anyone more loyally and efficiently discharged such a trust. For his services in the war the nation owed him a mighty debt of gratitude.

Unfortunately, in one respect he was unfitted for such a trust, and in that respect he discharged it most unsatisfactorily. He was not a good business man. He was careless and unsystematic in the keeping of accounts. He entrusted his work to too many agents and did not always supervise their doings with sufficient care. He himself paid out large sums of money without proper vouchers. Moreover, he inextricably mixed together national funds and State funds and his own private funds. Probably, too, under the stress of war and in

his zeal to facilitate its prosecution he at times spent public money more freely than he should have done. That he ever misappropriated a single cent is unthinkable. There was no more honest man in the world. But the end of the war found, as might have been expected, his accounts in a hopeless muddle.

The State Comptroller in 1816 found that there was apparently due to the State from Mr. Tompkins the sum of nearly \$120,000. For this Mr. Tompkins could not account, and accordingly the Legislature in 1818 referred the matter, for investigation, to a commission consisting of William A. Bayard, Cadwallader D. Colden, and Robert Bogardus. These gentlemen, eminent for character and ability, were directed to examine into his accounts with the State and to make a settlement of them on a basis not of technicalities but of equity. Mr. Bayard declined to serve, but Messrs. Colden and Bogardus did so, with painstaking diligence.

There was no disputing that the sum in question was due to the State. But Mr. Tompkins did not have the money and could not pay it. Instead he presented to the Commissioners certain claims against the State which if allowed would more than counterbalance the shortage. These claims were chiefly for commissions and royalties on loans, premiums, etc., such as the State would certainly have had to pay to bankers had they, instead of the Governor, handled its funds and performed its fiscal transactions. There was no doubt that such claims were honest and valid. The Commissioners accordingly recommended that enough of the claims be

allowed to counterbalance the deficit in his accounts to the State, and the Legislature, as stated, ordered the Comptroller to effect a settlement with the ex-Governor, then Vice-President of the United States, on that basis.

But that was not to be. Mr. Tompkins logically held that if his claims were valid in part they were valid as a whole, since all were of precisely the same nature; and he therefore insisted that all should be allowed, so that instead of merely paying his debt to the State they should return him a substantial balance. His indebtedness to the State was approximately \$120,000, and his claims against the State were \$250,000, making a balance due to him of \$130,000.

This precipitated a controversy, chiefly between Mr. Tompkins and the State Comptroller, Archibald McIntyre, in which both the letter and the spirit of the act of the Legislature were at issue. The claim which was to be paid under the act was for the premium of difference in value between treasury notes and United States bonds on the one hand and currency on the other, on a capital sum of about a million dollars. The Legislature ordered that claim to be paid, on the supposition—though it was not stated—that the premium was twelve per cent. That would have made \$120,000, or just enough to balance the account. But the ex-Governor and his friends proved that the premium prevailing in 1814 was twenty-five per cent., which would make \$250,000, entitling Mr. Tompkins to a balance of \$130,000.



To the latter the Comptroller demurred. He held, quite rightly, that the Legislature, while it intended to order payment of the claim, and of the claim for premium on the whole million dollars, meant that the claim should be reckoned at only \$120,000. To escape paying the larger sum, therefore, he resorted to a technical device which was doubtless quite foreign to the intention of the Legislature. That was, to grant the premium of twenty-five per cent., but to reckon it on only a part of the million dollars. He noted that the act ordered payment of the premium on all moneys which the Governor had borrowed "on his personal responsibility." Now, that was the case with the whole million dollars. But the Comptroller held that that meant moneys borrowed solely on his personal responsibility, with no other security. As the bulk of the million dollars had been borrowed on other securities as well as the Governor's responsibility, the Comptroller arbitrarily refused to sanction payment of the premium thereon, but on only a small part of the whole. The controversy was conducted with much animation throughout the remainder of 1819, long letters by both Tompkins and McIntyre being widely published throughout the State, without an agreement being reached. It should be added that the Comptroller was a man of great ability, who was held deservedly in the highest esteem by the people of the State, and there was no suspicion of any but entirely upright motives on his part, just as there was no suspicion of anything but absolute honesty in Mr. Tompkins's handling of public funds.

Matters were in this muddle when the Forty-third Legislature assembled on January 4, 1820. John C. Spencer, of Ontario county, was elected Speaker of the Assembly by sixty-four votes, cast by Clintonians and Federalists, against fifty for Peter Sharpe, cast by Bucktails, and seven scattering votes. Governor Clinton delivered another elaborate and statesmanlike address, devoted largely to the subjects of canals and other public works, prisons, schools, and the pressing need of a water supply for the city of New York. He also strongly urged the need of revision of the Constitution, especially criticising the Council of Appointment and advising its abolition. To that end he recommended the calling of a Constitutional convention. As a result of his urging, a committee of the Assembly presently reported in favor of calling a convention, not to prepare a new Constitution or generally to revise the existing one, but specifically to revise those parts relating to the Council of Appointment and the Council of Revision, and to the qualifications of voters, and such other parts as the Legislature might designate. A bill providing for the calling of such a convention was drafted and introduced, but failed of passage.

The Governor in his address also referred to the Missouri Compromise, and recommended that the Legislature should make some declaration on the subject of slavery. In consequence the Legislature adopted a concurrent resolution instructing the United States Senators from New York and requesting the Representatives to vote for the admission of no new

State to the Union without a prohibition of slavery as an indispensable condition of such admission.

A new Council of Appointment was elected by the Assembly on February 4, consisting of three Clintonians, John Lounsbury, Levi Adams, and Ephraim Hart, and one Bucktail, John D. Ditmas. Apart from a few Sheriffs and other minor officers, no political removals or appointments were made; probably for the reason, chiefly, that all the places were already filled by Clintonians and Federalists.

Early in the session the attention of the Assembly was called by Erastus Root to a newspaper report that William W. Van Ness, a Justice of the Supreme Court, had been implicated in some proceedings of dubious propriety in connection with the granting of a charter to the Bank of America, and on his motion a committee was appointed to investigate the matter and to determine whether there was adequate ground for impeachment proceedings. Unfortunately much partisan animosity was injected into the case, and the ultimate disposition of it was made on party lines, the Clintonians and Federalists voting against and the Bucktails voting for impeachment. Justice Van Ness was thus upheld and exempted from impeachment proceedings, and he doubtless had the comfort of a conscience free from reproach. Yet the imputation which had been cast upon him was so deeply taken to heart that his health thereafter steadily and hopelessly failed.

Meantime a still greater personal and political conflict was brewing. The Bucktails on January 16 held a caucus and unanimously nominated ex-Governor

Tompkins for the Governorship, believing that with him they could defeat Clinton, who was a candidate for reëlection. They were of course not unmindful of the financial complications in which he was involved, and that technically he was a defaulter. But they rightly believed his integrity to be above question, and they had confidence to believe that the voters of the State would take that view. He had not lost the personal charm which in former years had given him an unrivalled popularity; his record as a War Governor had given him national prominence; he had been chosen Vice-President of the United States. As a candidate in former elections he had shown extraordinary strength. Moreover, he was the representative of genuine Democracy unmixed with mere factionalism, while Clinton had practically separated himself from the Democratic party to lead a coalition party of his own, consisting of Clintonian Democrats and Federalists. It was shrewdly reckoned that the nomination would rally many Democrats who were tired of factional feuds and would, if such a consummation were possible, compass the defeat of the man who was regarded as being—and in fact was—the foremost factionist of his time.

This nomination made it inevitable that the matter of Mr. Tompkins's accounts should be taken up again and pressed to some determination. Accordingly, early in the session of the Legislature the Comptroller presented a detailed report of what he had done, or had tried to do, in pursuance of the act of the preceding Legislature. He explained the radical difference of opinion between

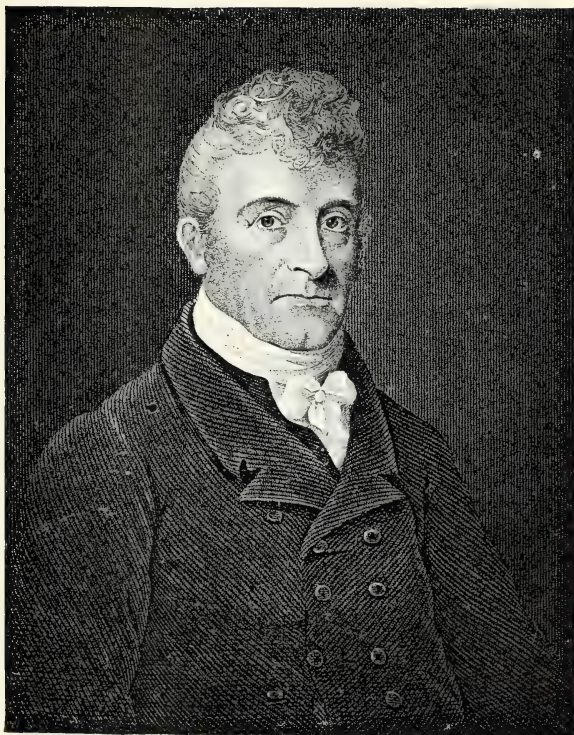




PETER B. PORTER

Peter B. Porter; born in Salisbury, Conn., August 14, 1773; lawyer; member of state assembly, 1802; removed from Canandaigua, Ontario county, to Buffalo in fall of 1802; member of congress, 1809-13; served in the war of 1812; again elected to congress and served from March 4, 1815 to January 23, 1816 when he resigned to become secretary of state of New York; appointed by President John Quincy Adams as secretary of war and served from June 21, 1828 to March 9, 1829; died at Niagara Falls, N. Y., March 10, 1844.





STEPHEN VAN RENSSELAER

Stephen Van Rensselaer; born in New York City, November 1, 1765; member of assembly, 1789-91 and 1808-10; state senate, 1791-96; lieutenant governor, 1795; major general of volunteers in the war of 1812; member of canal commission, 1816-39 and served 14 years as its president; reelected to assembly, 1818; member state constitutional convention, 1821; member of congress, 1822-29; died in Albany, N. Y., January 26, 1839.





himself and the former Governor concerning the interpretation of the act, and set forth in full the grounds upon which his own opinion was based. This report was referred to a special committee of the Assembly, of which Jedediah Miller, of Schoharie, was the chairman, and of which, of course, a majority were Clintonians. The committee spent much time in consideration of the case, not merely discussing Mr. McIntyre's report but also making further investigations into the matter and securing the opinions of various jurists concerning its merits. Finally, on March 16, it made an elaborate report upon the case and recommended that it be resolved, as the sense of the house, that the course pursued by the Comptroller had been that of "a firm, faithful, and intelligent public officer" and that it met with "the full approbation" of the Assembly.

A long debate ensued, of more than ordinary brilliancy and power on both sides. The Assembly at that time contained an unusually large proportion of men of high intellectual and oratorical ability, and the arguments and appeals made by such men as John C. Spencer, Thomas J. Oakley, and Elisha Williams on the side of the Comptroller, and Erastus Root, Peter Sharpe, and John T. Irving for ex-Governor Tompkins, would have done credit to any legislative assembly in the world. That the resolution would be favorably regarded by the majority of the Assembly was, however, a foregone conclusion, since there was a Clintonian majority in that house and the question was bound to be decided on political rather than juridical grounds.

The resolution was, of course, a hostile reflection upon the ex-Governor, and was thus regarded and bitterly resented by his friends.

Meantime another important move in the same campaign, but in the other direction, was begun in the Senate. The lead was there taken by Martin Van Buren, who on January 12 offered a resolution, which was adopted, calling upon the Comptroller for a full report upon the matter. Mr. McIntyre responded with an account of the controversy between himself and Mr. Tompkins, and with a detailed statement of the reasons for his refusal to allow all of the ex-Governor's claims. The matter was then referred to a special committee, of which Van Buren was the chairman, which considered it for some time and then on March 9 made a remarkable report, in which Van Buren with characteristic "foxiness" strove to vindicate Mr. Tompkins—who really needed no vindication—and at the same time to avoid any heavy draft upon the State treasury. The report was to the effect that the Comptroller should have allowed to Mr. Tompkins a premium of twelve and a half per cent. upon the whole capital sum of \$1,050,000. That would have amounted to \$131,250. From this there should have been deducted the amount due from Mr. Tompkins to the State, \$119,379.50, leaving a balance of \$11,870.50, which should have been paid to Mr. Tompkins in final settlement of the whole account. Van Buren accordingly introduced a bill directing that the sum named should be paid to the former Governor in consideration of his thereupon withdrawing all further claims upon the State.

Against this bill the Clintonians raged. A number of their Senators spoke against it, and took occasion in their speeches to reflect very unfavorably upon the former Governor. They also dwelt upon the fact, which was not denied by the friends of Mr. Tompkins, that the claims which he had made against the State of New York should have been made, if valid, against the United States government, since it was to it that his services had been rendered. Recognizing the force of this, Van Buren inserted a clause in the bill providing that the full amount allowed to Mr. Tompkins should be charged by the State of New York against the Federal government. The only speech in favor of the bill was made by Van Buren himself. It occupied in delivery the greater part of two days, and was regarded as one of the most ingenious and persuasive ever made by him. The bill was then passed by the Senate by a large majority, and was sent to the Assembly.

There it was referred to a special committee of which Thomas J. Oakley was chairman, and on April 6 was unfavorably reported on. The report held that the action of the Comptroller had been entirely correct, and that the bill already enacted, a year before, under which the Comptroller had acted, should be regarded as a finality; and it recommended that the Senate bill should be made to provide simply that if Mr. Tompkins did not pay to the State the sum due to it on or before August 1, 1820, the Comptroller should begin action against him to compel payment, in which suit, however, he should be permitted to present his claims for a premium as an offset. This report was favorably

acted upon by the Assembly, and the Senate bill was thus amended. But the Senate declined to concur in the amendment, and so neither the original Senate bill nor the Assembly substitute was ever enacted. Indeed, nothing more was done about the matter at that time. The election was at hand, and all possible political capital, both for and against Mr. Tompkins, but chiefly against him, had been made out of the wretched wrangle. More than six months later, after the nation had reelected him Vice-President, on November 10, 1820, a bill was introduced into the State Senate releasing him from all claims by the State in consideration of his releasing the State from all his claims against it, and thus settling the matter. This bill was hastily enacted, with practically no opposition, all men being eager, for decency's sake, to bury the scandal out of sight. Years afterward, after Tompkins's death, the State government discovered and acknowledged that it had rightfully owed him more than ninety thousand dollars over and above its claim against him.

Mr. Tompkins had been nominated for Governor by a caucus of the anti-Clintonian members of the Legislature, according to usage. No fewer than sixty-four members were present at the caucus. Benjamin Mooers, of Plattsburgh, a Senator, was nominated for Lieutenant-Governor. He had, by the way, been elected to the Senate at the preceding election as a Clintonian. The supporters of Clinton, though in the majority in the Assembly, were in a minority in the Legislature as a whole. Not wishing to advertise this fact by holding a caucus, therefore, they pretended to



disapprove that method of making nominations, and instead called a public meeting of the citizens of Albany, at which Governor Clinton was formally renominated, with John Tayler for Lieutenant-Governor.

On the eve of the election fifty of the foremost Federalists of the State, comprising an impressive proportion of men of wealth, learning, and generally high standing, put forth an address to the people of the State urging the election of Mr. Tompkins and especially opposing the reëlection of DeWitt Clinton, not because of any disapproval of his character, or of the measures with which he was identified, but simply because he was trying to form a personal party and thus to exalt a certain form of autocracy above democracy. The address also declared that the Federalist party, to which they had belonged, had been dissolved and had ceased to exist. There is no doubt that this manifesto had considerable influence with the voters of the State.

The campaign was bitterly contested down to the very moment of the closing of the polls, and the sole issue was whether DeWitt Clinton should continue to direct the State government. There was no question of policy, for Van Buren was as much committed to the completion of the canal as Clinton himself. But Clinton's friends contended that, having conceived and begun the great work, he should be permitted to complete it; while his foes insisted that it could be finished by someone else just as well, while in all other respects the State would be better off without Clinton, who was

a disturbing element. Van Buren expected Tompkins to be elected, to the very last. On the other hand, Clinton was equally confident of winning. The result was in fact exceptionally close. Clinton was successful by the small majority of 1,450, getting 47,444 votes to Tompkins's 45,990. But in the Legislature the Bucktails were overwhelmingly victorious. They increased their majority in the Senate, and transformed a Clintonian majority in the Assembly to a Bucktail majority of eighteen.

To Mr. Tompkins the result was a tragedy. He was unable to rid himself of the notion—though it was altogether erroneous—that the controversy over his accounts had turned the people against him, and that they widely regarded him as a defaulter and as a false claimant. Upon this he brooded, to the verge of melancholia. His reelection to the Vice-Presidency, and the settlement of his accounts by the Legislature, as already related, did not console him. In 1821 he was elected a delegate to the New York State Constitutional convention, and that convention made him its president, a place which he filled with fine dignity, urbanity, and ability. But the iron had entered his soul. His once sunny and lovable disposition became soured and irritable. His superb physical frame drooped and shrank. He indulged too much in strong drink. And at the age of fifty-one, soon after completing his second term as Vice-President, he died, leaving the memory of one of the most engaging and attractive figures that have ever adorned the public life of the State of New

York, or, indeed, of the United States, untimely driven from the scene in circumstances reflecting discredit and reproach upon almost everybody concerned in them excepting himself.

## CHAPTER XXII

### BUCKTAILS AGAINST CLINTON

“**P**LAYING politics” has unfortunately too often been a favorite occupation of the Legislature of the State of New York. We have had occasion hitherto to record many examples of it, sometimes of a kind most discreditable, and costly to the welfare of the commonwealth. It is to be doubted whether any dozen of the first forty-two Legislatures put together indulged in that reprehensible practice so much as the one Legislature, the Forty-third, whose doings we have just briefly recorded. Since its time its political activities and antics have been immeasurably surpassed, as we shall have occasion to see. And indeed it may be that its partisan record was surpassed by that of its immediate successor, the Forty-fourth. There can be little question that these two bodies were far above the average in the ability of their members. But high intellectual ability and the purest personal character seemed to afford no bar against the intensest partisanship nor any deterrent upon its practice.

The Forty-third Legislature, then, adjourned on April 14, 1820, after providing for the assembling of its successor in special session for the choice of Presidential Electors. The special session began on November 7, 1820, when Peter Sharpe, a Bucktail, of New York, was elected Speaker of the Assembly by 69 votes against 52 for John C. Spencer, the Clintonian candidate.



Although the special purpose of the session was the choice of Presidential Electors, the Legislature addressed itself to much other important business, and the Governor's message, or speech, was, like its predecessors, long, elaborate, and filled with recommendations of constructive statesmanship.

One of his recommendations was for the enactment of a law providing for the choice of Presidential Electors by the people at a general election and on a general State ticket; this arrangement to remain in force until the United States Constitution should be so amended—as he expected it to be—as to require Electors to be chosen by the people, by districts, in all States. He also made a vigorous protest against the interference of Federal officers in State politics or State elections. This evil certainly did exist, to an extent which warranted him in apprehending that, if not checked, it would in time undermine and destroy the fabric of free government. He urged that the State should resolutely resist this malign tendency, and expressed a hope that Congress would realize that it was its duty to take remedial action concerning it.

His most important recommendation, however, was that for the holding of a Constitutional convention. It is not improbable that he was at least in part moved to this by the course of his political adversaries. In the preceding August the Bucktails had held a large meeting at Tammany Hall, in New York, at which a resolution was adopted declaring that a convention ought to be held, with unlimited powers to revise the Constitution of the State. There was no doubt that the

sentiment of the people of all parties was turning in that direction, and, intolerant and contemptuous as he often was of the advice and the example of others, Clinton probably thought that it was desirable to identify himself with the movement as a leader in it rather than let others have all that distinction and himself be ultimately forced into it as a follower. His recommendation concerning a convention was notably judicious and statesmanlike—to the effect that the Legislature should simply submit to the people the question whether such a convention should be called, to be decided by a majority of the popular vote, and that the result of the convention should be submitted to the people, to be approved or rejected by popular vote before becoming effective. He particularly emphasized the need of abolition of the Council of Appointment, declaring that “If the ingenuity of man had been exercised to organize the appointing power in such a way as to produce continual intrigue and commotion in this State, none could have been devised with more effect than the present arrangement.” Reviewing the record of that Council, it is not easy to convict Clinton of extravagance in this judgment, though it must not be forgotten that nobody surpassed him in misuse of the Council.

The Legislature followed his recommendation so far as to pass a bill providing for a Constitutional convention. But, its majority being hostile to him, it foolishly ignored his wise recommendation that the question be referred to the people, but directly ordered the calling of a convention. The result was that the Council of Revision vetoed it, the illustrious Chancellor

Kent himself writing the decision, and vetoed it on that very ground, that it ordered the holding of a convention instead of letting the people decide whether to do so or not. Had the bill been framed in accordance with Clinton's suggestion it would have been approved and would have become law.

The very day after the Governor in his message delivered that scathing condemnation of the Council of Appointment the Assembly elected a new Council, and by a strict party vote elected four anti-Clintonian Senators: Walter Bowne, of the Southern district; John T. Moore, of the Middle; Roger Skinner, of the Eastern; and David E. Evans, of the Western. The election of Mr. Skinner was widely regarded as little short of scandalous. He had for nearly a year been holding office as United States Judge for the Northern district of New York. That he should be permitted to serve at the same time as a State Senator was bad enough. It was contrary to a former resolution of the Senate. But that he should also be elected a member of the Council of Appointment was revolting to a large part of his own political party. It so incensed the State that when the Constitutional convention met the next year, one of the very first things proposed and agreed upon was a section forbidding such holding of Federal and State offices at the same time. This new Council did not actually assume office and discharge any of its functions until the regular session of the Legislature, in January, 1821.

The day after the election of the Council the Legislature chose Presidential Electors. It was a foregone

conclusion, of course, that Monroe and Tompkins were to be reëlected. Yet Bucktails and Clintonians voted for two separate sets of candidates, the former winning by a strict party vote.

The session was marked by the introduction by Erastus Root of a resolution declaring that human slavery could not exist in the State of New York. In a speech of great power he argued that the Declaration of Independence was the supreme law of the United States, that it declared that all men were created equal, and that therefore it was impossible that any person should be born a slave. He was, however, unable to get the Legislature to vote upon the measure.

One of the most violent controversies of the session was that over the Governor's protest against the interference of Federal office-holders in New York elections. The State Senate passed a resolution asking him to lay before it such information as he possessed relative to the formation of such officers in "an organized and disciplined corps," the intimation being that Clinton had declared them to be thus organized. In fact he had not, but had merely predicted what might be expected in case they should thus become organized. But Clinton made no attempt at a correction, but contented himself with answering that he would "in due time" make a communication on the subject which he hoped would be satisfactory to the Senate, a tone of fine irony being manifest in his reply. This stung the Senate to the quick, and it retorted by adopting a resolution setting forth that the Governor had not furnished the Senate with any proof of the charges which he had



made against the Federal government, that it was highly improper to make such charges without having in his possession ample testimony to support them, and that therefore the Senate had the strictest confidence in the patriotism and integrity of the national government and would not change its opinion save upon full and satisfactory testimony. This resolution was adopted by a strict party vote. On receiving the next day an official copy of it, Clinton wrote to the Senate declaring that he would fully notice the whole matter at the next session of the Legislature, and expressing sincere regret that the Senate should, in so unprecedented a manner, have lost sight of the respect due to itself and of the courtesy due to a coördinate branch of the government. This dignified rebuke drove the anti-Clintonian Senators so nearly mad that they voted to return it to the Governor, and the next moment adjourned until January, 1821.

The Legislature adjourned on November 21, 1820, and reassembled for its regular session on January 9, 1821. A week later the Governor sent in to the Assembly a voluminous message on the subject of Federal office-holders and their interference in New York politics. Because it was so voluminous and was accompanied with so many letters, affidavits, and other documents, the Governor sent it to the Assembly in a large green bag, such as lawyers used for carrying papers, from which circumstance it was called the "Green Bag Message." In the message and documents it was shown that the naval storeskeeper in Brooklyn and various other officials had been very active and

energetic against the Clintonian candidates for the Legislature at the last election, and that others elsewhere in the State had likewise been. Among the accompanying documents was a letter which Martin Van Buren had written to Henry Meigs, a Representative in Congress from New York City, urging the removal of certain postmasters who were friends of Clinton and the appointment of anti-Clintonians in their places. He made no charges against the men, save a vague complaint that it seemed impossible to get Bucktail newspapers distributed through the mails. The men were to be removed solely for political purposes. Two of the men whose removal had thus been suggested by Van Buren were promptly dismissed from their places; but there is no proof that there was any consequent improvement in the mail service. The "Green Bag Message" was referred to a joint committee of the two houses, which on March 15 made a violently partisan report, savagely abusing the Governor and denying the truth of his allegations.

In defiance of this exposure of Van Buren's partisanship, the Bucktails made him their candidate for the United States Senatorship, to succeed Nathan Sanford, whose term was about to expire. Now, Sanford was a Tammany Hall man and was intensely hostile to Clinton. Yet in hope of defeating Van Buren the Governor directed every one of his followers in the Legislature to vote for Sanford's reelection. His thought was that a number of the Bucktails might be induced to vote for Sanford. But it was in vain. All the Bucktails voted for Van Buren and he was elected by

a strict party vote. At this time Clinton was furious against Van Buren, calling him in one of his letters an "arch-scoundrel," and again a "corrupt scoundrel."

The most important business of the session was the passing of another bill for a Constitutional convention. The committee to which the veto of the former bill had been submitted made a long report, bitterly denouncing the Council of Revision for its action. Then John C. Spencer proposed to introduce a bill providing that at the coming general election in April the people should vote whether there should be a convention; that if they ordered it to be held the Governor should announce the fact and the election should be held in June; that the delegates should be chosen by the counties in proportion to their population; and that all amendments adopted by the convention should be submitted to the people for ratification or rejection, each amendment being separately considered and acted upon. This admirable plan, which was in accord with the Governor's recommendation and which was free from the objectionable features which the Council of Revision had found in the other bill, was made a victim of partisan animosity. Permission to introduce the measure was refused to Mr. Spencer, on the technical ground that the former bill was still before the house and must first be disposed of.

A long and acrimonious debate on that former bill ensued, in which many days of the session were wasted. Finally a vote was taken upon it, and it was lost, failing to receive the needed two-thirds majority. Then, instead of welcoming Mr. Spencer's proposal, the



Bucktail majority directed the committee to which the veto of the bill had been referred to draft and present a new bill. It did so, but the new bill was so much like the old that it was practically certain that the Council of Revision would veto it for the same reasons as before. Then an amendment was proposed, avoiding a veto by submitting to the people the question whether the convention should be held. Over this a long debate occurred, after which it was adopted by the votes of the Clintonians and some Bucktails, though practically all of the Bucktail leaders, with the exception of Erastus Root, voted against it. The bill as thus amended was then passed by the Legislature and was approved by the Council of Revision.

At this session the Legislature added another member to the Board of Canal Commissioners, selecting for the place William C. Bouck, who was then a Senator from Schoharie county, a member of the Bucktail party, and who was destined to play thereafter an important part in the political history of the State. The session was prolonged until April 3, when it adjourned without day.

Meantime the moribund Council of Appointment, dominated by Roger Skinner, a bitter political and personal foe of the Governor, and popularly known as "Skinner's Council," diligently applied the principle that "to the victors belong the spoils." After dismissing the Sheriffs of eleven counties and appointing Bucktail partisans in their places, it removed Archibald McIntyre from the office of State Comptroller. He had held the place for many years under a succession





NATHAN SANFORD

Nathan Sanford; born in Bridgehamton, L. I., November 5, 1777; lawyer; United States commissioner in bankruptcy, 1802; United States attorney for New York, 1803-15; member state legislature, 1808-9, 1811; member state senate, 1812-15; United States senator, 1815-21; delegate to state constitutional convention, 1821; chancellor of New York, 1823-25; again elected to United States senate, serving from 1826-31; died at Flushing, N. Y., October 17, 1838.



of Councils of varying political complexions, and had come to be regarded as a non-political official who, because of the value of his experience, should be permanently retained. His capacity and character were above suspicion. But he had not stood with the Bucktails in support of Daniel D. Tompkins against DeWitt Clinton, and therefore he had to go. His successor, John Savage, was an excellent man, who had not sought the place and who probably would not have wished the change to be made.

The same day the Council removed Thomas J. Oakley from the office of Attorney-General, of course because of his friendship for Clinton. In his place it appointed Samuel A. Talcott, a young lawyer of Utica, until then not conspicuous in State affairs. He had been a Federalist, but refused to go with the bulk of that party in supporting Clinton and was therefore welcomed into the ranks of the Bucktails. He was a close friend of Martin Van Buren, and was the latter's personal choice for the place. Of his excellent character and high professional abilities there was no question. Cadwallader D. Colden was removed from the Mayoralty of New York City and was replaced with Stephen Allen, and Peter A. Jay was removed from the Recordship to make room for Richard Riker.

The Council, as if determined to make as bad a record as possible, then made a "clean sweep" of every Sheriff, Surrogate, County Clerk, County Judge, and Justice of the Peace in the State who was so much as suspected of favoring Governor Clinton. It even invaded the military establishment and dismissed, for

purely political reasons, General Anthony Lamb, the Commissary-General, and General Solomon Van Rensselaer, the Adjutant-General. To the former place Alexander M. Muir, a loyal Bucktail, was appointed. The removal of General Van Rensselaer created a sensation and provoked widespread protests, because of his services in the late war and his long connection with the militia. He was replaced by the Council with William L. Marcy, who thus took another step toward the national distinction which he ultimately won.

Worst of all the Council's acts, however, was the dismissal of Gideon Hawley from the office of Superintendent of Schools. He was a man of the highest character and ability, of signal devotion to the cause of popular education, who had during a number of years rendered invaluable services to the State for a meager recompense. More than any other man he is entitled to grateful remembrance as the founder of the New York public school system. Moreover, he had scrupulously refrained from political activities of any kind. Yet without the pretense of dissatisfaction with him he was turned out of office and was replaced by one Welcome Esleeck, a third-rate attorney with no fitness whatever for the place. The scandal was so flagrant that the Bucktails in the Legislature themselves revolted against it. On the initiative of Erastus Root a bill was passed by acclamation legislating the egregious Esleeck out of office by providing that thenceforth the Secretary of State should *ex-officio* be Superintendent of Schools. The Secretary of State at that time was John Van Ness Yates, who was at least a man of high attainments,



though without special fitness for educational work. It was a good thing to exchange him for Esleeck, though it was of course a bad thing to make a distinctively political officer and politician head of a great department from which party politics should always be scrupulously excluded.

Following these things came the April elections. Archibald McIntyre after his removal from the Comptrollership was nominated for Senator in the Middle district, for the purpose of giving him a popular vindication. Although the district at the preceding election had given a Bucktail majority of about 800, he was elected by about 400, a result which added to the popular condemnation of the Council of Appointment. Elsewhere the Bucktails were generally successful in at least holding their ground. They elected 70 members of the Assembly, to the Clintonians' 52. Of the eight Senators elected five were Clintonians and three Bucktails. The Bucktails would probably have elected five to the Clintonians' three had it not been for the candidacy of Mr. McIntyre, which resulted in his election and also that of his Clintonian colleague, Abraham Hasbrouck, in the Middle district.

The most notable feature of the election was, however, the overwhelming majority in favor of a Constitutional convention. There had for years been a growing feeling among thoughtful men that the Constitution needed revision, particularly in respect to the appointing power. To that sentiment "Skinner's Council" during the three months immediately preceding the election gave a powerful impetus. Indeed,

it would be difficult to conceive anything that could more strongly have influenced the people of the State to vote for constitutional revision—which was sure, first and foremost, to wipe that Council out of existence—than such performances as the arbitrary removal of such men as Messrs. McIntyre, Van Rensselaer, and Hawley. True, the people were not yet, and would not be for many years, ready to make an end of the spoils system. But at least they purposed to have that system administered in some more responsible fashion than by that utterly discredited Council. So they polled a majority of 74,445 votes in favor of a Constitutional convention with plenary powers.

## CHAPTER XXIII

### A NEW CONSTITUTION

**T**HE Legislature in March, 1821, submitted to the people the question of a Constitutional convention. The people in April following voted for such a convention, with plenary power, by 109,000 to 35,000. On the third Tuesday of June a special election was held for Delegates to the convention, these being chosen on county tickets. In the greater part of the State party lines were sharply drawn, and the Bucktails were generally successful. There were some exceptions, however, notably in Oneida county, where a mixed delegation of Bucktails, Clintonians, and Federalists was elected. The convention met at Albany on August 28, 1821, and was overwhelmingly Bucktail in complexion, as was indicated by the vote of 94 to 16 by which Daniel D. Tompkins was chosen to be its chairman.

It was for ability and character one of the most noteworthy bodies that ever assembled in the State. Among its members were Daniel D. Tompkins, Vice-President of the United States; Rufus King and Martin Van Buren, United States Senators; James Kent, Chancellor of the State; Erastus Root, Abraham Van Vechten, Ambrose Spencer, Stephen Van Rensselaer, Nathan Sanford, Peter Augustus Jay, William W. Van Ness, Peter Sharpe, Jacob Radcliffe, Jonas Platt, Elisha

Williams, James Tallmadge, Peter R. Livingston, Samuel Young, Ezekiel Bacon, Nathan Williams, John Duer, Samuel Nelson, Jacob Sutherland, and other men of genuine "light and leading."

It was from the outset the purpose of the convention to make a radical revision of the Constitution, amounting to a practically new instrument. The work was apportioned among ten committees, respectively on the Legislative department, the Executive department, the Judiciary department, the Council of Revision, the Council of Appointment, the right of suffrage, the rights and privileges of citizens, the commencement of the legislative year, the mode of making future revisions, and all other topics in the Constitution not already mentioned.

The first important action taken by the convention for actual revision of the Constitution was the abolition of the Council of Revision and the vesting of the veto power in the Governor alone. This was not done, however, without much debate, not so much over the abolition of the Council as over the extent of the Governor's veto power. Peter R. Livingston, Erastus Root, and others urged that the Legislature should be empowered to pass a bill over a veto by a simple majority vote. It was, they argued, undemocratic to permit one man to overrule the majority of both houses of the Legislature; particularly since he could do so not alone because he considered a bill unconstitutional, but also could veto a bill simply on grounds of expediency, or because he personally did not like it. These arguments did not



prevail, and the Governor was invested with the veto power, to be overridden only by a two-thirds vote of both houses of the Legislature.

The next considerable debate was over the length of the Governor's term. Earnest arguments were made for a three years' term, and also for one of only a single year, but finally a term of two years was decided upon by the narrow margin of 61 votes to 59.

The committee on the Legislative department recommended that the State be divided into eight Senatorial districts, from each of which four Senators should be elected; that no member of either house should during the term for which he was elected be eligible to any appointive office; that no person holding any office, civil or military, under the United States government, should be eligible to the Legislature; that all persons holding constitutional offices "on good behavior" should be removable only by a two-thirds vote of both houses; and that the capital of the common school fund should always remain inviolate. All these recommendations were substantially adopted.

Over the question of the elective franchise a great debate arose. The committee recommended practical abolition of the property qualification by extending the franchise to all white men who had lived in the State six months, and who within the year had paid taxes, or worked on the highways, or been enrolled in the militia. Peter A. Jay, Abraham Van Vechten, and others strove to have the word "white" omitted, so as to enfranchise negroes, but were opposed by Erastus Root, Samuel Young, Ambrose Spencer, and many more. Mr. Van

Buren did not speak on it, but voted for the motion made by Mr. Jay for the striking out of the word "white," and so did Mr. Tompkins, and the motion was adopted by a vote of 63 to 59. Later this action was reversed, and the colored citizens of the State were left without the right to vote.

Chancellor Kent made a noteworthy speech urging the retention of the property qualification of at least \$250 freehold for all voters for State Senators, as proposed by Ambrose Spencer, in which he said:

"The growth of the city of New York is enough to startle and awaken those who are pursuing the *ignis fatuus* of universal suffrage. In 1773 it had 21,000 souls; in 1801 it had 60,000; in 1806 it had 76,000; in 1820 it had 123,000. It is rapidly swelling into the unwieldy population, and with the burdensome pauperism, of a European metropolis. New York is destined to become the future London of America; and in less than a century that city, with the operation of universal suffrage and under skillful direction, will govern the State."

The opposite side was taken strongly by Erastus Root and Martin Van Buren, and finally prevailed by an overwhelming majority.

One of the most troublesome questions before the convention was that of the reform of the judicial system, discussion of it being protracted and acrimonious, largely because of the fact that thitherto the Chancellor and Justices had often been active partisan politicians. Erastus Root and others wished to legislate Chancellor Kent and the five Supreme Court Justices out of official

existence; others wished to retain the Chancellor but get rid of the Justices; and still others wished to retain the old system practically unchanged. Finally, by the narrow majority of 62 to 53 it was voted to recast the judicial system by creating a new Supreme Court consisting of a Chief-Justice and two Associate-Justices. and by dividing the State into not fewer than four nor more than eight districts, in each of which should be a District Judge, appointed in the same manner and holding office by the same tenure as the Justices of the Supreme Court, and possessing the powers of a Justice of the Supreme Court in chambers.

Martin Van Buren was chairman of the committee on the appointing power, and he reported in favor of the abolition of the discredited Council of Appointment and the substitution of a system under which militia officers, excepting major-generals and the Adjutant-General, should be elected by persons subject to military duty; the chief State officers, such as Secretary of State, Comptroller, etc., should be elected as United States Senators were, by the Legislature in joint session; all judicial officers (except Justices of the Peace, who were to be elected by the people) and Sheriffs should be appointed by the Governor with the consent of the Senate; Clerks of courts should be appointed by the courts which they were to serve; and no judicial officer should be removed save by a majority vote of the Senate on recommendation of the Governor, for expressed cause. This plan was adopted after long debate, with two exceptions. It was decided to have Justices of th

Peace appointed by the Governor from lists submitted by the County Supervisors and Courts of Common Pleas, and to have Sheriffs and County Clerks elected by the people.

After these and other questions had been separately debated and settled, the convention on November 10, 1821, overwhelmingly voted to adopt the revised Constitution as a whole. Only eight votes were recorded in the negative, including those of Peter Augustus Jay and Abraham Van Vechten. These eight were irreconcilably opposed to the extension of the suffrage and to the discrimination against colored men. They and sixteen others declined to sign the instrument after it had been adopted. The convention then adopted a brief but eloquent address to the people of the State, drafted by Erastus Root, commending the revised Constitution to their favorable consideration. It then adjourned without day. To complete the record it may here be added that in February, 1822, the revised Constitution was ratified by the people of the State at a special election, by the decisive vote of 74,732 ayes and 41,043 nays, and that it went into effect on December 31, 1822.

The changes thus effected in the State government were radical and sweeping, and must be considered to have been all for the better. Perhaps the most important reform of all was the abolition of the Councils of Appointment and of Revision, and of the power of the Governor to prorogue the Legislature. The abolition of the property qualification for white voters was another important advance in pure democracy, as was



also the considerable extension of the franchise. A noteworthy vindication of DeWitt Clinton's canal policy was seen in the constitutional recognition of the canal system of the State and the creation of a permanent Board of Canal Commissioners, to be a department of the State government. The date of the State elections was also changed from April to November, and the term of the Governor was reduced from three years to two. This last-named provision shortened DeWitt Clinton's term, making it end on January 1, 1823, instead of July 1, 1824.

The Forty-fifth Legislature assembled at Albany on January 2, 1822, still, of course, under the old Constitution. The Bucktails were in control of the Assembly, and elected Samuel B. Romaine, of New York City, to be Speaker. The Governor's address was unusually long, and was devoted to practical topics of constructive legislation. He made only a brief reference to the new Constitution, expressing no opinion as to its merits, for the reason that it was then being considered by the people of the State in advance of their voting upon it, and it would be improper for him to do anything which might influence their decision upon it. He dwelt at some length upon the agricultural interests of the State, and upon the desirability of providing for their products an ampler and more profitable domestic market, instead of looking so much to the foreign export trade. This was to be effected by the development of means of coast and inland transportation, and also by the adoption of a protective tariff system which would stimulate

American manufacturing industries and thus increase the demand for agricultural products.

He gave, naturally, much attention to the canals of the State, congratulating the Legislature upon the progress which had been made in their construction and anticipating the completion of the Erie and Champlain canals during the year 1823. He called attention to the canals which were projected in the new States of Ohio and Illinois, and recommended that the influence of New York in Congress should be exerted in the direction of securing national aid for them. He also recommended that such influence should be given toward persuading the national government to enlarge and beautify the capital city of Washington. Other topics to which he addressed himself were the public schools, the militia, and the need of reform in criminal jurisprudence. Finally, assuming this to be the last address which he should ever make before the Legislature, he said:

“Whatever diversity of opinion may exist, I am persuaded that we will all coöperate with a sincere and entire devotion to our solemn and momentous duties, in cherishing a spirit of conciliation and forbearance, and in cultivating that respect which we owe to each other and to ourselves.”

That was patriotic counsel. Unhappily, it did not prevail. The bitterness of the Bucktails against Clinton was not to be assuaged. A Bucktail Assemblyman, Mr. Ulshoeffer, immediately moved for a committee to consider the answering of the Governor's speech, and was of course himself appointed its chair-

man. He soon presented a long and labored report, as unfavorable as possible to the Governor, and particularly censuring the Governor for making an address to the Legislature instead of sending in a written message. In that Clinton was, of course, only following the invariable custom of his predecessors since the organization of the State. It had also been the custom of the President of the United States thus to address Congress, during the first twelve years of our constitutional life. Moreover, DeWitt Clinton himself, in his first address to the Legislature, had referred to the subject, had explained that he adhered to the custom of personal address merely because it seemed to him to be more respectful to the Legislature than the sending of a written message would be, and had assured the Legislature that he did not desire or expect it to make any formal address in reply, such as the earlier Legislatures had invariably done.

Mr. Ulshoeffer's attack upon the Governor was therefore most uncalled for and can be attributed to no other motive than personal and partisan spite. He concluded his report with the moving of a resolution, which had been adopted by the preceding Assembly, denouncing the making of a personal speech by the Governor and the returning of a reply by the Legislature as a "remnant of royalty" which "ought to be abolished." On this there was an animated debate, in which many of the Bucktails showed that they were not willing to go so far in hostility to the Governor. One of the few Clintonians, Mr. McKown, moved as a substitute that the report of the special committee be not

approved, that the committee be dismissed from further consideration of the subject, and that the old custom of formally replying to the Governor's address, which was dropped by the preceding Legislature, be not restored. This substitute motion ultimately prevailed, but the unpleasant effect of Mr. Ulshoeffer's report and motion marred the remainder of the session.

Although the new Constitution, when adopted and made effective, would abolish the Council of Appointment, that body would have to be maintained until that reform was effected, and accordingly on January 10 the Assembly proceeded to elect the last such Council that was ever to exist. It selected, naturally, four Bucktails, or at least opponents of the Governor. They were John Townsend, of the Southern district; Charles E. Dudley, of the Middle; Benjamin Mooers, of the Eastern; and Perry G. Childs, of the Western. Mr. Mooers, it will be recalled, had been elected to the Senate as a Clintonian, but had gone over to the Bucktail side, and had been the Bucktail candidate for Lieutenant-Governor on the ticket with ex-Governor Tompkins against Clinton. This Council had very little to do, since all the offices were already filled with Bucktails or anti-Clintonians, and there was no occasion to remove any of them.

Several important acts were passed by this Legislature in anticipation of the new Constitution. Assemblymen were apportioned among the counties, in accordance with the whole number provided for in the new Constitution. Another measure relieved the State of all responsibility for the lotteries which had been



established for the benefit of Union College and other worthy institutions, and turned over to the managers of those institutions the task of directing them. Thereupon, under the leadership of Dr. Eliphalet Nott, of Union College, an arrangement was made with Archibald McIntyre, the former State Comptroller, and John B. Yates, to be the managers of all lotteries conducted for the benefit of those institutions. The Legislature adjourned without day on April 17.

Under the provisions of the new Constitution the April elections were now abolished. None were held in 1822, the contest at the polls being deferred until the Tuesday after the first Monday in November. Accordingly the Legislative caucus for the selection of candidates for Governor and Lieutenant-Governor was held at a much later date than usual. The only caucus held was that of the Bucktails, who by this time were of so overwhelming strength that any opposition to them seemed futile. There were numerous candidates for the Governorship, inspired and encouraged by the practical certainty that whoever was named by the Bucktails would be elected, and, of course, that under the new Constitution the Governor would possess far greater power than ever before, particularly over appointments to office. Indeed, never before in the history of the State had there been so many aspirants or so much wirepulling, intriguing, and manœuvring to control the nominating caucus.

It is an interesting illustration of a certain phase of political obsession that Daniel D. Tompkins was willing to accept the nomination, although his election

would have necessitated his resignation of the office of Vice-President of the United States, upon his second term in which he had entered a year before. This was partly, perhaps, because to his ardent and active disposition the strenuous life of a Governor appealed more strongly and congenially than the comparative calm and political neutrality of the president of the Senate. Doubtless, however, he desired the "vindication" which he imagined such election would give him, on account both of the controversy over his accounts with the State and also of his defeat by Clinton at the last election; though to the impartial and detached historian any such "vindication" seems entirely superfluous.

Another candidate was Erastus Root, who in brilliancy of intellect, sincerity of patriotism, and purity of character was the peer of any contemporary, and whose great services to the State gave him abundant title to recognition and preferment. Nathan Sanford, one of the foremost jurists of the time, was another candidate. So was Peter B. Porter, a man of commanding worth. So was Henry Seymour, who had distinguished himself in important public works. None of these were, however, regarded with favor by the coterie of men who were dictating and with iron hand controlling the policy of the party. Only two candidates were seriously considered, and between them the party rulers were not long in making a decision. These were Colonel Samuel Young, and Justice Joseph C. Yates, of the Supreme Court. The former, of whom we have already heard in these pages, was an able lawyer, a powerful orator, and an experienced legislator and

administrator. He was also a master of political tactics, though his extreme radicalism and his intolerance toward all who disagreed with him alienated many who otherwise would have been his enthusiastic supporters. Justice Yates had been considered by the leaders as a candidate in 1820, but had prudently declined to enter the contest against Clinton. He was a modest, cautious man, of exceptional personal charm and irreproachable character, though of mediocre ability and passive rather than aggressive disposition. He was well fitted by temperament to be a Justice of the Supreme Court, but not well fitted to be Governor.

There was no question that the majority of the Bucktail party and also a majority of its influential leaders would have preferred Colonel Young. But majorities did not count. The party was controlled by an oligarchy at the State capital—of which we shall hear much more hereafter,—and that body decided upon Justice Yates as the most “available” candidate. That meant, so far as the electoral campaign was concerned, that he would be the easiest of all candidates to elect, since he had no enemies and since Chief-Justice Spencer and most of the Clintonian leaders were quite ready to support him. Indeed, since it was a foregone conclusion that Clinton would not seek reelection, Yates was practically the Clintonian candidate. It was good policy to nominate him, therefore, partly in order to avoid Clintonian opposition, and partly in order thus to reunite the Democratic party. So far as the prospective administration was concerned, it meant that as Governor Mr. Yates would be more readily compliant



with the wishes of the party "bosses" than the immeasurably more independent and aggressive Colonel Young. One of the foremost promoters of Justice Yates's candidacy was John Van Ness Yates, a distant relative, whose place as Secretary of State at Albany, whose engaging personality, and whose political acumen and industry gave him great influence.

The outcome of the Legislative caucus was that Mr. Yates was nominated for Governor by a decisive majority over Colonel Young. This was satisfactory to the party generally, but it was a bitter disappointment to Colonel Young. True, he affected to regard it lightly, saying in a jocose maner that if the State could get along without him he would try to get along without the State. Also, he offered Justice Yates his congratulations. But beneath the surface the defeat rankled, and thereafter he neglected no opportunity to intrigue against his victorious rival, and it was in no small measure through his enmity, all the more deadly because partly concealed, that Governor Yates's administration ended in political failure. The caucus without contest nominated Erastus Root for Lieutenant-Governor.

It was an anomaly that DeWitt Clinton was denied renomination and election. He had shown himself one of the ablest constructive statesmen that had ever occupied the Governorship, and his great canal scheme, the greatest public work ever undertaken by New York, was approaching successful completion amid the universal plaudits of even those who had formerly most bitterly opposed it. Yet political influences



against him were so strong that his friends realized that his reëlection would be impossible, and they so advised him early in the year. He did not take kindly to the prospect of being shelved. His strong impulse was to defy the hostile leaders, ignore the advice of friends, and enter the campaign with all his old audacity. But in the end he yielded, persuaded that candidacy would surely end in humiliating defeat. In order to "let him down easily," several of his chief political lieutenants adopted resolutions appropriately laudatory of his public services and appointed a committee to inquire his wishes concerning a renomination. To that inquiry he replied that he had decided not to let his name be used as that of a candidate. Thereupon his friends, and all who were left of the disintegrating Clintonian party, determined to put no candidate into the field, but rather to favor the nomination of Justice Yates by the Bucktails.

The reasons for this elimination of Clinton, after five years of singularly efficient service, are not difficult to discern. He was a competent statesman, but a poor politician. He was deficient in tact, in tolerance, in the spirit of accomodation, in that indefinable quality known as "personal magnetism." He was cold, arrogant, dictatorial, animated by the spirit of "rule or ruin." He was a great head of the State. He was no leader of a party. However, he was an indomitable philosopher, and in the very hour of his rejection he meditated upon a future recouping of his fortunes. At the height of the campaign he predicted that the

old party lines would thereafter be broken, the old party names would vanish, the Legislative caucus system for making nominations would be abandoned, and that Yates, Van Buren, and their associates would in time "go down like the stick of a rocket." How completely that prophecy was fulfilled in the course of only a couple of years, we shall hereafter see.

Justice Yates was not, however, to be without a competitor. The Clintonians named no candidate, and the Federalists named none. But Solomon Southwick named himself. That erratic genius, one of the most gifted and most fantastic men of his time, had had a brilliant and influential career as a journalist, as the editor successively of the *Albany Register*, the *Plough-boy*, and the *Christian Visitant*. He had for years been Clerk of the Assembly. He had been Sheriff, State Printer, and postmaster at Albany. But he had been tried for bribery and removed from the office of State Printer, and dismissed from the postmastership for defalcation. Various real estate speculations and other enterprises had proved unprofitable, and he had become practically penniless. In such circumstances he conceived the extravagant notion of putting himself forward for the Governorship of the State. He secured as his chief campaign worker Thurlow Weed, then a bright young journalist at Manlius but destined to become one of the foremost political leaders of the State, and got him to canvass the western part of the State in his behalf. But Weed soon recognized the madness of the undertaking. "He was insanely anxious

to become Governor, and all the more insane because of its impossibility," said Weed, long afterward. "He had been editing with great industry and ability the *Ploughboy* and the *Christian Visitant*, and beguiled himself with a confident belief that farmers and Christians, irrespective of party, would sustain him. . . . Years afterward I learned that in politics, as in almost everything else, Mr. Southwick was blinded by his enthusiasm and credulity."

True, there were those who believed that Southwick would win. Even DeWitt Clinton—*mirabile dictu!*—was among them. Only a few weeks before the election he spoke confidently of the impending defeat of Yates. The outcome was, however, that Yates was elected by a more nearly unanimous vote than any other ever cast for Governor of New York. He received 128,493 votes, to Southwick's 2,910. At the same time the Bucktails elected every member of the State Senate, and nearly nine-tenths of the Assembly.

In such fashion was the first great era in the political history of New York ended. For forty-six years it had been under its first Constitution, and its politics had been marked with the divisions and rivalries first of Federalists and Anti-Federalists, and then of the Federalists, the Democratic-Republican party, and the various factional elements of the latter organization. Now a new Constitution was to prevail, together with a new alignment of parties and new party nomenclature. Anti-Federalists, Republicans, Martling's Men, Bucktails, and what not were to be known simply as Demo-

crats, and in opposition to them was to arise from the ruins of Federalism the great Whig party. A new era had dawned in New York government and politics, though it was still to be dominated for a time by the old leaders.













